REPORT
OF THE
HUMAN RIGHTS COMMITTEE

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-SIXTH SESSION

SUPPLEMENT No. 40 (A/46/40)

UNITED NATIONS

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Covenant

1. As at 26 July 1991, the closing date of the forty-second session of the Human Rights Committee, there were 95 States parties to the International Covenant on Civil and Political Rights and 55 States parties to the Optional Protocol to the Covenant, both of which were adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1966 and opened for signature and ratification in New York on 19 December 1966. Both instruments entered into force on 23 March 1976 in accordance with the provisions of their articles 49 and 9 respectively. Also as at 26 July 1991, 31 States had made the declaration envisaged under article 41, paragraph 1, of the Covenant, which came into force on 28 March 1979. The Second Optional Protocol, aiming at the abolition of the death penalty, which was adopted and opened for signature, ratification or accession by the General Assembly by its resolution 44/128 of 15 December 1989, entered into force on 11 July 1991 in accordance with the provisions of its article 8.

2. A list of States parties to the Covenant, to the Optional Protocol and to the Second Optional Protocol, with an indication of those that have made the declaration under article 41, paragraph 1, of the Covenant, is contained in annex I to the present report.

3. Reservations and other declarations made by a number of States parties in respect of the Covenant and/or the Optional Protocols are set out in document CCPR/C/2/Rev.2 and in notifications deposited with the Secretary-General. Reservations to article 9, paragraph 3 and article 14, paragraph 3 (d), of the Covenant by Finland and to article 23, paragraph 4, of the Covenant by the Republic of Korea were withdrawn, effective 26 July 1990 and 15 March 1991 respectively.

B. Sessions and agenda

4. The Human Rights Committee has held three sessions since the adoption of its last annual report. 1/ The fortieth session (1009th to 1036th meetings) was held at the United Nations Office at Geneva from 22 October to 9 November 1990, the forty-first session (1037th to 1063rd meetings) was held at United Nations Headquarters, New York, from 25 March to 12 April 1991 and the forty-second session (1064th to 1091st meetings) was held at the United Nations Office at Geneva from 8 to 26 July 1991. The agenda of the sessions are shown in annex III to the present report.

C. Membership and attendance

5. At the 11th meeting of States parties, held at United Nations Headquarters, New York, on 12 September 1990, nine members of the Committee were elected, in accordance with articles 28 to 32 of the Covenant, to fill vacancies created by the expiration of terms of office on 31 December 1990. The following members were elected for the first time: Mr. Kurt Herndl and

Mr. Waleed Sadi. Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Vojin Dimitrijevic, Mr. Omran El Shafei, Mr. Birame Ndiaye, Mr. Julio Prado Vallejo and Mr. Bertil Wennergren were re-elected. A list of the members of the Committee is given in annex II.

6. All the members attended the fortieth session of the Committee. Mr. Cooray, Mr. Mavrommatis, Mr. Mommersteeg and Mr. Prado Vallejo attended only part of that session. All the members attended the forty-first session. Mr. Ndiaye attended only part of that session. All the members attended the forty-second session. Ms. Chanet, Mr. El Shafei, Mr. Herndl, Mrs. Higgins, Mr. Lallah, Mr. Serrano Caldera and Mr. Wako attended only part of that session.

D. Solemn declaration

7. At its 1037th meeting (forty-first session), members of the Committee who had been elected or re-elected at the 11th meeting of States parties to the Covenant made a solemn declaration before assuming their functions, in accordance with article 38 of the Covenant.

E. Election of officers

8. At its 1037th meeting, held on 25 March 1991, the Committee elected the following officers for a term of two years, in accordance with article 39, paragraph 1, of the Covenant:

Chairman: Mr. Fausto Pocar

Vice-Chairmen: Mr. Francisco José Aguilar Urbina
Mr. Vojin Dimitrijevic
Mr. S. Amos Wako

Rapporteur: Mr. Nisuke Ando

9. The Committee expressed its deep appreciation to Mr. Rajsoomer Lallah, the outgoing Chairman, for his leadership and outstanding contribution to the success of the Committee's work.

F. Working groups

10. In accordance with rules 62 and 89 of its rules of procedure, the Committee established working groups to meet before its fortieth, forty-first and forty-second sessions.

11. The working group established under rule 89 was entrusted with the task of making recommendations to the Committee regarding communications under the Optional Protocol. At the fortieth session, the working group was composed of Messrs. Dimitrijevic, El Shafei, Myullerson, Ndiaye and Prado Vallejo. It met at the United Nations Office at Geneva from 15 to 19 October 1990 and elected Mr. Myullerson as its Chairman/Rapporteur. At the forty-first session, the working group was composed of Mr. Ando, Mrs. Higgins, Mr. Myullerson, Mr. Ndiaye and Mr. Prado Vallejo. It met at United Nations Headquarters,

New York, from 18 to 22 March 1991 and elected Mrs. Higgins as its Chairman/Rapporteur. At the forty-second session, the working group was composed of Messrs. El Shafei, Myullerson, Pocar, Prado Vallejo and Sadi. It met at the United Nations Office at Geneva from 1 to 5 July 1991 and elected Mr. Myullerson as its Chairman/Rapporteur.

12. The working group established under rule 62 was mandated to prepare concise lists of issues concerning second and third periodic reports scheduled for consideration at the Committee's fortieth, forty-first and forty-second sessions, and to consider any draft general comments that might be put before it. Additionally, the working group which met before the fortieth session was requested to review the Committee's procedures under article 40 of the Covenant in the light of the discussion on that subject at the Committee's thirty-ninth session. The group which met before the forty-second session was requested to formulate recommendations relating to the meeting in September 1991 of the Preparatory Committee for the World Conference on Human Rights. At the fortieth session, the working group was composed of Ms. Chanet, Mr. Cooray, Mr. El Shafei and Mr. Wako. It met at the United Nations Office at Geneva from 15 to 19 October 1990 and elected Mr. El Shafei as its Chairman/Rapporteur. At the forty-first session, the working group was composed of Mr. Aguilar Urbina, Ms. Chanet, Mr. Dimitrijevic and Mr. El Shafei. It met at United Nations Headquarters, New York, from 18 to 22 March 1991 and elected Ms. Chanet as its Chairman/Rapporteur. At the forty-second session, the group was composed of Mr. Aguilar Urbina, Mr. Ando, Mr. Dimitrijevic and Mr. Wennergren. It met at the United Nations Office at Geneva from 1 to 5 July 1991 and elected Mr. Aguilar Urbina as its Chairman/Rapporteur.

G. Other matters

Fortieth session

13. The Committee was informed by the Under-Secretary-General for Human Rights of the report of the Secretary-General on the work of the Organization submitted to the General Assembly at its forty-fifth session. 2/ Referring to certain positive developments of the previous year and to the fact that the importance of human rights was receiving greater international recognition, the Under-Secretary-General stressed that, nevertheless, the underlying reality of the era continued to be marked by massive and widespread violations of human rights. The challenge to the international community to promote and ensure respect for human rights was in fact greater than ever. The Centre for Human Rights was seeking, within the means at its disposal, to respond to that continuing challenge as energetically as possible. The General Assembly's decision in 1988 to launch a World Public Information Campaign on Human Rights had greatly enhanced the practical possibilities in the months and years ahead for collaborating with various United Nations bodies, Member States and non-governmental organizations in an effort to reach out to the hundreds of millions of human beings who needed information about fundamental human rights. The Under-Secretary-General for Human Rights also informed the Committee of other significant developments of relevance to its work that had occurred since the Committee's thirty-ninth session, notably the actions taken by the third meeting of persons chairing human rights treaty bodies, held at Geneva from 1 to 5 October 1990.

14. The Committee also reviewed its methods of work under article 40 of the Covenant and decided that, for a trial period and in order to facilitate the process of preparing lists of issues, individual members of the Working Group on article 40 would be assigned, as from the time of appointment to the Working Group, special responsibilities relating to the drafting of one or more of the lists of issues that were to be prepared for the Committee's next session. Members were to be provided, as soon as possible, with all relevant background materials concerning the country or countries in question, including previous reports, summary records, analytical studies and other United Nations studies or reports that might be relevant, as well as the draft lists of issues prepared, as at present, by the Secretariat. Additionally, non-governmental organizations that wished to contribute information were to send such information to the Secretariat as far in advance of the session as possible for transmission to the appropriate member of the Working Group. The list of issues would continue to be drawn up by the Working Group in the light of the draft prepared by the member concerned and submitted for formal endorsement by the Committee.

15. After an exchange of views among members concerning the Committee's methods of work in dealing with states of emergency declared under article 4, paragraph 3, of the Covenant, the Committee requested the Secretariat to provide at each of its sessions an updated list showing any state of emergency of which the Secretary-General might have been notified since the Committee's previous session.

16. On behalf of the Committee, the Chairman expressed the Committee's appreciation to Messrs. Cooray and Mommersteeg, who were to leave the Committee after the current session, for the dedication and competence with which they had discharged their functions as members of the Committee.

Forty-first session

17. The Committee was informed by the representative of the Secretary-General of the adoption by the General Assembly at its forty-fifth session of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (resolution 45/158 of 18 December 1990) and that, in its resolution 45/85 of 14 December 1990, the General Assembly had endorsed the conclusions and recommendations of the third meeting of persons chairing human rights treaty bodies. In that regard, the representative of the Secretary-General noted that progress had been made in implementing a number of those recommendations. In particular, the consolidated guidelines for the initial part of the reports of States parties would shortly be transmitted to all States parties, which would be requested to submit the required information to the Secretariat in a "core document". The manual on reporting, prepared in collaboration with the United Nations Institute for Training and Research (UNITAR), would also be circulated to States parties. Additionally, he noted that the General Assembly had taken action concerning the financing of the annual recurrent costs of the computerized database.

18. The Committee, taking note of recent and current events in Iraq affecting the situation of human rights in Iraq, adopted a special decision (see para. 40 and annex VI below).

Forty-second session

19. The Committee was informed by the Under-Secretary-General for Human Rights of the entry into force on 11 July 1991 of the Second Optional Protocol to the Covenant aiming at the abolition of the death penalty. It also noted that the Centre for Human Rights had carried out a series of highly productive consultations concerning the implementation of the Convention on the Rights of the Child which involved United Nations organizations such as the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Refugees (UNHCR), the World Food Programme (WFP), the International Labour Organisation (ILO), the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the World Bank; intergovernmental organizations such as the International Committee of the Red Cross, INTERPOL and the Inter-American Children's Institute; and non-governmental organizations, including Amnesty International, Defence for Children International, the International Alliance of Women, the League of Red Cross Societies, the International Federation of Social Workers and the Swedish Save the Children Fund. It was also noted with satisfaction that the Committee had organized, with the special cooperation of UNICEF, an informal meeting with the Committee on the Rights of the Child in May 1991 which allowed for a most useful exchange of views between members of the Committee and representatives of various governmental and non-governmental organizations, and that the Committee would hold its first formal session from 30 September to 18 October 1991.

20. The Under-Secretary-General also informed the Committee of certain preparatory activities relating to the World Conference on Human Rights and, in particular, to the first session of the Preparatory Committee for the World Conference. The comments and suggestions of the Committee are reflected in annex VIII to the present report.

21. The Committee also noted with satisfaction that the consolidated guidelines for the initial part of States' reports (HRI/1991/1) had been transmitted to all States parties and decided to revise its own general guidelines for the preparation of initial and periodic reports (CCPR/C/5 and CCPR/C/20) appropriately.

22. Having noted with appreciation the recent issue of volume 1 (in English) of the Yearbook of the Human Rights Committee for 1983-1984, the Committee expressed the wish that work on the Yearbook, as the official record of the Committee, should be accelerated, that the existing backlog should be eliminated as soon as possible and that henceforth the volumes should be issued on a regular and timely basis.

H. Publicity for the work of the Committee

23. The Chairman, accompanied by members of the Bureau, held press briefings during each of the Committee's three sessions. The Committee noted with special satisfaction the increased level of interest in its activities shown by the media, as demonstrated by the steady growth in the number of journalists attending the briefings and by greater press coverage.

I. Future meetings of the Committee

24. At its forty-first session, the Committee confirmed its calendar of meetings for 1992-1993, as follows: the forty-fourth session was to be held at United Nations Headquarters from 23 March to 10 April 1992; the forty-fifth session at the United Nations Office at Geneva from 13 to 31 July 1992; the forty-sixth session also at the United Nations Office at Geneva from 19 October to 6 November 1992; the forty-seventh session at United Nations Headquarters from 22 March to 9 April 1993; the forty-eighth session at the United Nations Office at Geneva from 12 to 30 July 1993 and the forty-ninth session also at the United Nations Office at Geneva from 18 October to 5 November 1993. In each case, the Committee's working groups would meet during the week preceding the session.

J. Adoption of the report

25. At its 1089th, 1090th and 1091st meetings, held on 25 and 26 July 1991, the Committee considered the draft of its fifteenth annual report, covering its activities at the fortieth, forty-first and forty-second sessions, held in 1990 and 1991. The report, as amended in the course of the discussion, was unanimously adopted by the Committee.

II. ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-FIFTH SESSION

26. At its 1062nd, 1085th and 1089th meetings, held on 11 April, and 23 and 25 July 1991, the Committee considered the agenda item in the light of the relevant summary records of the Third Committee and of General Assembly resolutions 45/85 and 45/135 of 14 December 1990 and 45/155 of 18 December 1990.

27. The Committee discussed the relevant resolutions adopted by the General Assembly at its forty-fifth session and noted with appreciation the Assembly's favourable comments on its work. The Committee noted with particular satisfaction the renewed calls within the Assembly for giving wider publicity to the Committee's annual report, and to the United Nations human rights treaty implementation mechanisms more generally, and expressed strong agreement, in particular, with the recommendation that countries having difficulties in introducing necessary changes in their legislation that would allow for ratification of the International Covenants on Human Rights should be encouraged to request appropriate support from the Centre for Human Rights under the advisory services and technical assistance programme. The Committee also appreciated the comments of delegations urging States parties to enter into a frank dialogue with the Committee so as to maximize the benefits from the reporting system.

28. Concerning the discussion within the General Assembly relating to the effective implementation of human rights instruments and the effective functioning of human rights treaty bodies, the Committee fully agreed that the system for monitoring the implementation for human rights instruments was at the core of United Nations activities in the field of human rights and that the need for States to submit periodic reports for examination by and discussion with the treaty bodies was an important factor in strengthening the acceptance of accountability by States parties for promoting and protecting the rights of their citizens and in fostering a more open and less defensive attitude. The Committee also agreed that computer technology would help to make the reporting system flexible and more effective and that, in order to reduce the overall reporting burden, the Centre for Human Rights, through its advisory services and technical assistance programme, should assist States in the preparation of their reports.

29. The Committee gave detailed consideration to General Assembly resolution 45/155 relating to the convening of the World Conference on Human Rights in 1993, particularly with a view to formulating preliminary comments and recommendations for submission by the Committee to the first meeting of the Preparatory Committee for the World Conference on Human Rights, to be held in September 1991. The comments and recommendations adopted by the Committee in the foregoing regard are contained in annex VIII to the present report.

III. REPORTS BY STATES PARTIES SUBMITTED UNDER ARTICLE 40 OF THE COVENANT

A. Submission of reports

30. States parties have undertaken to submit reports in accordance with article 40, paragraph 1, of the International Covenant on Civil and Political Rights within one year of the entry into force of the Covenant for the States parties concerned and thereafter whenever the Committee so requests. In order to assist States parties in submitting the reports required under article 40, paragraph 1 (a), of the Covenant, the Human Rights Committee, at its second session, approved general guidelines regarding the form and contents of initial reports. 3/

31. Furthermore, in accordance with article 40, paragraph 1 (b), of the Covenant, the Committee at its thirteenth session adopted a decision on periodicity requiring States parties to submit subsequent reports to the Committee every five years. 4/ At the same session, the Committee adopted guidelines regarding the form and contents of periodic reports from States parties under article 40, paragraph 1 (b), of the Covenant. 5/ At its thirty-ninth session, the Committee adopted an amendment to its guidelines for the submission of initial and periodic reports relating to reporting by States parties on action taken in response to the issuance by the Committee of views under the Optional Protocol. 6/

32. As indicated in paragraph 21 above, the Committee at its forty-second session revised its general guidelines for the submission of initial and periodic reports to take into account the consolidated guidelines for the initial part of the reports of States parties to be submitted under the various international human rights instruments, including the Covenant (HRI/1991/1). The text of the consolidated guidelines (HRI/1991/1); the text of the general guidelines relating to the form and contents of initial reports, as revised (CCPR/C/5/Rev.1); and the text of the general guidelines regarding the form and contents of periodic reports, as revised (CCPR/C/20/Rev.1) are contained in annex VII to the present report.

33. At each of its sessions during the reporting period, the Committee was informed of and considered the status of the submission of reports (see annex IV below).

34. The action taken, information received and relevant issues placed before the Committee during the reporting period (fortieth to forty-second sessions) are summarized in paragraphs 35 to 41 below.

Fortieth session

35. With regard to reports submitted since the thirty-ninth session, the Committee was informed that the second periodic report of Austria and the third periodic reports of Canada and Poland had been received.

36. The Committee decided to send reminders to the Governments of Gabon, Equatorial Guinea, the Niger and the Sudan, whose initial reports were overdue. In addition, the Committee decided to send reminders to the Governments of the following States parties whose second periodic reports were

overdue: Afghanistan, Belgium, Bolivia, Bulgaria, Cameroon, Central African Republic, Congo, Cyprus, Democratic People's Republic of Korea, Egypt, El Salvador, Gabon, Gambia, Guinea, Guyana, Iceland, Iran (Islamic Republic of), Jamaica, Kenya, Lebanon, Libyan Arab Jamahiriya, Luxembourg, Mali, Netherlands (with respect to the Netherlands Antilles), New Zealand (with respect to the Cook Islands), Peru, Suriname, Syrian Arab Republic, Togo, United Republic of Tanzania, Venezuela and Zambia; and to the Governments of Bulgaria, Cyprus, Denmark, the Gambia, Hungary, Iran (Islamic Republic of), Italy, Lebanon, the Libyan Arab Jamahiriya, Mauritius, Mongolia, New Zealand, Romania, Suriname, the Syrian Arab Republic, Trinidad and Tobago, Uruguay, Venezuela and Yugoslavia, whose third periodic reports were overdue.

Forty-first session

37. The Committee was informed that the initial report of the Sudan and the third periodic reports of Colombia and Mongolia had been received.

38. In view of the growing number of outstanding State party reports, the Committee agreed that members of the Bureau as well as several members of the Committee should meet in New York with the Permanent Representatives of all States parties to whom two or more reminders had been sent in connection with their overdue reports. Accordingly, contacts were made with the Permanent Representatives of Belgium, Bulgaria, Cyprus, Egypt, El Salvador, Gabon, Iceland, Iran (Islamic Republic of), Lebanon, the Libyan Arab Jamahiriya, Luxembourg, Mali, the Netherlands (with respect to the Netherlands Antilles), New Zealand, Peru, Romania, Suriname, the Syrian Arab Republic, Trinidad and Tobago, Venezuela and Yugoslavia, who agreed to convey the Committee's concerns to their Governments. Since it was not possible to establish contact with the Permanent Representatives of Afghanistan, the Central African Republic, the Congo, the Gambia, Equatorial Guinea, Guyana, Jamaica, Kenya, and the Democratic People's Republic of Korea, the Committee requested a former Chairman of the Committee, who is also the Permanent Representative of his country to the United Nations, to pursue the establishment of contacts with the above-mentioned representatives subsequent to the conclusion of the Committee's session.

39. In addition, the Committee decided to send reminders to all States whose initial reports or second or third periodic reports should have been submitted before the end of the forty-first session. Initial reports were overdue from Gabon, Equatorial Guinea, Ireland and the Niger; second periodic reports were overdue from Afghanistan, Belgium, Bolivia, Bulgaria, Cameroon, the Central African Republic, the Congo, Cyprus, the Democratic People's Republic of Korea, Egypt, El Salvador, Gabon, the Gambia, Guinea, Guyana, Iceland, Iran (Islamic Republic of), Jamaica, Kenya, Lebanon, the Libyan Arab Jamahiriya, Luxembourg, Mali, New Zealand (with respect to the Cook Islands), Peru, Suriname, the Syrian Arab Republic, Togo, the United Republic of Tanzania, Venezuela and Zambia; and third periodic reports from Barbados, Bulgaria, Cyprus, Denmark, El Salvador, the Gambia, Hungary, Iran (Islamic Republic of), Italy, Kenya, Lebanon, the Libyan Arab Jamahiriya, Mali, Mauritius, New Zealand, Romania, Suriname, the Syrian Arab Republic, Trinidad and Tobago, the United Republic of Tanzania, Venezuela and Yugoslavia.

40. The Committee also noted that the third periodic report of Iraq was due for submission to the Committee on 4 April 1990. Taking into consideration recent and current events in Iraq affecting the situation of human rights under the Covenant, the Committee, acting under article 40, paragraph 1 (b), of the Covenant, decided to request the Government of Iraq to submit its third periodic report without further delay to be discussed by the Committee at its forty-second session and, in any event, to submit by 15 June 1991 its report, in summary form if necessary, as it related in particular to the application at the present time of articles 6, 7, 9 and 27 of the Covenant (see annex VII below).

Forty-second session

41. The Committee was informed that the initial reports of Algeria and the Niger, the second periodic reports of Belgium, Guinea, Luxembourg, Peru and the United Republic of Tanzania, as well as the third periodic reports of Iraq, Senegal and Uruguay had been received.

B. Consideration of reports

42. During its fortieth, forty-first and forty-second sessions the Committee considered the initial report of the Sudan; the second periodic reports of Canada, India, Jordan, Madagascar, Morocco, Panama and Sri Lanka; and the third periodic reports of Canada, Finland, Iraq, Spain, Sweden, the Ukrainian Soviet Socialist Republic and the United Kingdom of Great Britain and Northern Ireland. A list of State party delegations participating in the consideration of the reports submitted by their countries is contained in annex IX to the present report.

43. The status of reports considered during the period under review and reports still pending consideration is indicated in annex V to the present report.

44. The following sections relating to States parties are arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of reports at its fortieth, forty-first and forty-second sessions. These sections are only summaries, based on the summary records of the meetings at which the reports were considered by the Committee. Fuller information is contained in the reports and additional information submitted by the States parties concerned 7/ and in the summary records referred to.

Canada

45. The Committee considered the second and third periodic reports of Canada (CCPR/C/51/Add.1 and CCPR/C/64/Add.1) at its 1010th to 1013th meetings, held on 23 and 24 October 1990 (see CCPR/C/SR.1010-1013).

46. The reports were introduced by the representative of the State party, who explained that under the Canadian Constitution, legislative authority for the implementation of the Covenant's provisions was shared between federal, provincial and territorial governments. Extensive consultations had thus been

necessary between all levels of government prior to Canada's accession to the Covenant, and meetings continued to be held regularly in order to facilitate compliance with its provisions.

47. Referring to the Canadian Charter of Rights and Freedoms, the Federal Human Rights Acts and other legislation which guaranteed and protected the fundamental values enshrined in international human rights instruments, he pointed out that necessary mechanisms had been set up to ensure that those values were upheld. The Supreme Court of Canada in its judgements had often emphasized that the Charter had been significantly influenced by and in many ways reflected the Covenant, in particular with respect to the interpretation given to section 15 of the Charter relating to equality before the law and non-discrimination. Effective remedies for the assertion of the rights and freedoms reflected in the Covenant had been set up, and a substantial volume of litigation had taken place under the Charter. Strong anti-discrimination measures, particularly in areas where discrimination or unfairness were reflected in subtle or indirect ways, had also been adopted.

48. Concerning the recent events at Oka, Quebec, involving Mohawk Indians, the representative underlined the critical importance of addressing aboriginal issues in Canada effectively and in an open and constructive manner. A government strategy to preserve the special place of indigenous peoples, based on the aboriginal and treaty rights contained in the Canadian Constitution, had been announced on 25 September 1990. That strategy was based on the acceleration of land-claims settlements, the improvement of economic and social conditions on reserves, legislative changes regarding the relationship between aboriginal peoples and Governments, and concerns of Canada's aboriginal peoples in contemporary Canadian life. He also noted that pursuant to an Agreement to provide redress to Canadians of Japanese ancestry for injustices they had suffered during and after the Second World War, a Canadian Race Relations Foundation had been established and that a Court Challenge Programme providing for financial assistance to disadvantaged groups and persons who wished to challenge government action relating to equality or minority language rights had been created.

Constitutional and legal framework within which the Covenant is implemented

49. With regard to that issue, members of the Committee wished to receive clarification of the current situation in respect of the 1987 Constitutional Accord relating to Quebec and, more particularly, of the consequences of the rejection of the Accord by certain provinces. They also wished to know whether there had been any further progress since the submission of the third periodic report in the effort to reach agreement on providing a constitutional basis for self-government by aboriginal groups; what were the respective roles of regular courts, ombudsmen, the Canadian Human Rights Commission and Human Rights Tribunals in responding to human rights complaints; how Human Rights Tribunals were composed, how much independence they enjoyed and what was the effect of their decisions; what were the activities and composition of the British Colombia Council of Human Rights; and whether there had been any further developments, since the submission of the third periodic report, towards the creation of a body at federal or provincial level with overall responsibility for the protection of human rights embodied in the Covenant. Clarification was also sought of the inconsistencies, if any, between the Charter of Rights and Freedoms and the Human Rights Act as well as between

federal and provincial legislation in the field of human rights, and how such contradictions, as well as those between domestic legislation and the Covenant, were resolved.

50. In addition, members wished to know what factors or difficulties had been encountered in implementing the Covenant, in particular in respect of the implementation of article 1 of the Covenant and the enjoyment of other human rights guaranteed under the Covenant by persons belonging to vulnerable groups such as minorities, aliens, refugees, prisoners and aboriginal peoples; whether limitations placed on the rights and freedoms protected under section 1 of the Charter were compatible with the corresponding restrictive clauses of the Covenant; whether Indians living in the Yukon and the Northwest Territories had access to the Canadian Human Rights Commission and whether human rights legislation applied to them; whether the aboriginal self-government proposals being negotiated with 161 Indian communities in March 1990 included the right of such peoples to internal self-determination, consisting of their right freely to choose their own domestic and political institutions and form of government, and to pursue their economic, social and cultural development; what the relationship was between article 1 and article 27 of the Covenant in so far as Canada was concerned; and what follow-up action had been taken as a result of views adopted by the Committee under the Optional Protocol relating to Canada.

51. In his reply to the questions raised by members of the Committee, the representative of the State party stated that the Meech Lake Accord had not been ratified by the requisite number of provinces and that, therefore, the process of constitutional reform was stalled. Initiatives to encourage a national dialogue on that fundamental issue were, however, currently under consideration. There had been no further progress since the submission of the third periodic report in the effort to reach agreement on providing a constitutional basis for self-government by aboriginal groups. The first amendment to Canada's new Constitution had arisen out of a series of constitutional conferences on aboriginal matters, where self-government had been the dominant issue. Unfortunately, the proposals put forward for constitutional recognition of the right of aboriginal self-government within the context of the Canadian Federation had not attracted sufficient support to result in a constitutional amendment. The aim of the negotiations on self-government by aboriginal groups was to give them control over events which directly affected them. The Government was, however, not willing to concede full sovereignty, in the internationally accepted sense of the word, to the aboriginal groups, because it feared that such a step would result in the breakup of the Federation. Nevertheless, the authorities intended to work with aboriginal people within the existing constitutional framework in order to realize their aspirations for more autonomy and control over matters affecting their lives.

52. Referring to the respective roles of regular courts, ombudsmen, the Canadian Human Rights Commission and Human Rights Tribunals in responding to human rights complaints, the representative emphasized that, under section 24 of the Charter, the Canadian courts had broad authority to provide any remedy they considered just and appropriate to any persons whose rights had been infringed. Pursuant to section 32 of the Charter, the constitutional protection of human rights was restricted to disputes between private parties and the State. Under the Canadian Human Rights Act, any individual or group

that had reasonable grounds to believe that a person had engaged in discrimination contrary to the Act could file a complaint to the Human Rights Commission, which operated on an independent basis although its members were appointed by the Government. The Commission served as an initial investigation, conciliation and clarification mechanism to which the parties were given an opportunity to make submissions. Once the Commission decided to refer a case to a Human Rights Tribunal, the Chairman of the Human Rights Tribunal Panel selected the members of the tribunal that was to hear the case. The Panels were selected on a case-by-case basis and were independent of the Human Rights Commission and the Government. The Human Rights Tribunal adjudicated the complaint of discrimination according to a procedure similar to that of a court, although its rules were more informal. In practice, the Commission on Human Rights usually carried the case of the complainant and made representations on his behalf before the Human Rights Tribunal. Tribunal orders could be registered in the Federal Court of Canada and were then enforceable as a court order. Decisions of the Commission not to refer a case to a Tribunal could be appealed against and were subject to judicial review again in the Federal Court of Appeal.

53. Referring to questions relating to the status of the Covenant in domestic law, the representative said that each level of Government acting pursuant to its legislative authority was supreme, subject to the Canadian Charter of Rights and Freedoms. In the case of any conflict in the area of implementation of the Covenant between the federal and provincial legislative power, the federal legislation would prevail. In Canada, international obligations and treaties that might affect private rights and obligations were not self-executing but required domestic legislation in order to be given effect. Each level of Government had therefore to act to ensure the full implementation of all the rights guaranteed by the Covenant in order for those rights to have effect at the domestic level. When Canada ratified the Covenant, it reviewed its human rights legislation to ensure that it complied with it. In addition, a committee of federal, provincial and territorial officials met twice a year in order to supervise the implementation of Canada's obligations under the Covenant. However, the Charter of Rights and Freedoms and the Bill of Rights did not guarantee all the rights enshrined in the Covenant because the relevant legislative processes were complicated and a number of political and linguistic compromises had had to be made.

54. Responding to other questions, he stated that limitations to the rights enshrined in the Charter were permissible if their objective was important enough to justify interference with an individual's rights and freedom and if the means used to achieve that objective did not have an unnecessarily harsh effect on the individual. Section 52 of the Charter of Rights and Freedoms of the Province of Quebec was currently being contested in the courts. While the Human Rights Act no longer applied to the Yukon, since the territory had adopted its own human rights code and arranged for people to refer complaints for decision in the territory, it continued to apply in the Northwest Territories.

55. Responding to questions raised in connection with views adopted by the Committee under the Optional Protocol, the representative explained that after the Committee had decided, in the Lovelace case, that the provisions of the Indian Act were discriminatory and in conflict with article 27 of the Covenant, the Government had amended the Act to provide for the reinstatement

of Indian status in respect of women who married non-Indians and their children, as well as other groups. Some 76,000 persons had since acquired Indian status as a result of that amendment. The Committee's decision in the Lubicon Lake Band had confirmed the Government's opinion that it had an obligation to the Lubicons that had to be settled. Private discussions had been held between representatives of the Federal Government, the government of Alberta and the Band's solicitor concerning prospects for acceptance of a government offer by the Lubicons and the possibility for arbitration on outstanding issues. A response from the Band to the government proposals was being awaited.

State of emergency

56. With regard to that issue, members of the Committee wished to know why the protections in section 4 (b) of the new Emergencies Act appeared to be restricted to Canadian citizens and permanent residents and whether such restrictions were compatible with the prohibition against discrimination contained in article 4, paragraph 1, of the Covenant; what were the relevant provisions of the National Defence Act in respect of protests by indigenous groups; which rights had been suspended under that Act during the incidents near Montreal in the summer of 1990; and whether that suspension was consistent with article 4 of the Covenant. Members also expressed concern about the non obstante clause provided for in section 33 of the Canadian Charter of Rights and Freedoms, which seemed to permit infringements of fundamental rights in certain circumstances, and asked, in that regard, whether the right to life might be involved and, if so, under what circumstances. Further information was also requested on the extraordinary power, referred to in the second periodic report, of the government of Manitoba province to suspend various rights.

57. In his reply, the representative of the State party explained that section 4 (b) of the new Emergencies Act prohibited the detention of individuals on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. The provision was intended to prevent the repetition of incidents which had occurred during the Second World War when Canadian citizens of Japanese descent had been detained solely on the ground of their ethnic origin. Section 4 (b) was subject to the guarantees of the Charter of Rights and Freedoms and the Bill of Rights, and was therefore consistent with article 4 of the Covenant. Action had been taken during the events of the summer of 1990 under the National Defence Act, which authorized military intervention to assist the civil authority in restoring order. No rights had been suspended, and any individuals who considered that the police had infringed their basic rights had access to the courts.

58. Referring to questions raised regarding section 33 of the Charter, the representative assured the Committee that its concerns would be drawn to the attention of the Government but noted that in the future the right to life might also be applied in such contexts as abortion, euthanasia and organ transplants.

59. A state of emergency had only been declared once, under the Manitoba Emergency Measures Act, in 1989, when the territory had been affected by major forest fires. The prerogatives under the Act were used in accordance with the

provisions of the Charter of Rights and Freedoms and were consistent with article 4 of the Covenant.

Non-discrimination and equality of the sexes

60. With reference to that issue, members of the Committee wished to receive clarification of the references in section 6 of the Charter of Rights and Freedoms to "mobility rights" and wondered whether such rights were guaranteed only to Canadian citizens. They also inquired whether the recent review of the Canadian Human Rights Act had given rise to any proposals to amend federal legislation; why political opinion was not one of the prohibited grounds for discriminatory treatment except in the case of Newfoundland; whether any measures had been taken to amend the Unemployment Insurance Act so as to eliminate discrimination on such grounds; whether Indians could invoke both the Human Rights Act and the Indian Act; and whether the fact that all female offenders in the country were placed in a single federal penitentiary for women, sometimes very far away from their usual place of residence, did not constitute discrimination against women. Clarification was also sought of the concept of "reasonable accommodation" and of the functions and activities of the Citizens' Participation Branch.

61. In addition, members recalled that although the Covenant did not speak of the right to immigration or even of the right to asylum, the Committee was of the view that article 26 of the Covenant required that all rights and advantages should be accorded to everyone without discrimination of any kind. In that regard, it was asked what measures had been taken to avoid any discrimination on the grounds enumerated in article 26. In particular, concern was expressed over the heavy backlog of cases of asylum seekers and, in that respect, over the priority that was being accorded on the basis of the language spoken by the asylum seeker.

62. In his reply, the representative of the State party said that "mobility rights" were covered by general legislation that did not discriminate on the basis of province of origin and did not require residence as a condition of eligibility for social services. Rights restricted to Canadian citizens concerned only the right to enter, stay in and/or leave the country. The comprehensive review of the Canadian Human Rights Act had not yet been completed. Section 15 of the Charter prohibited discrimination on a certain number of grounds, which were not exhaustive and were sufficiently broad to cover any other grounds of discrimination not expressly mentioned. The Federal Government was considering whether or not the question of political or other opinion should be added to the Canadian Human Rights Act as prohibited grounds for discrimination. Various provisions of the Unemployment Insurance Act had been judged discriminatory by a Human Rights Tribunal and a bill had, consequently, been tabled in Parliament to enable those flaws to be eliminated. The principle of "reasonable accommodation" held that everything possible had to be done to enable a person to participate in employment or to have access to goods and services, although that requirement had to be subject to a balancing test to see whether it would cause undue hardship, cost or inconvenience to the employer. The Citizens' Participation Branch sought to protect the rights of individuals by helping federal, provincial and territorial governments to implement international treaties, preparing for the ratification of new instruments and promoting a greater awareness of human rights. The provisions of article 67 of the Human Rights Act were intended to

prevent the special measures taken on behalf of Indians from being denounced as discriminatory because they did not apply to all Canadians. Only women sentenced to more than two years' imprisonment were committed to a penitentiary; others were held in one of the many establishments administered by the provinces. It had been recently announced that the women's federal prison was to be closed and that five regional establishments were to be constructed.

63. Referring to questions raised in connection with asylum seekers, the representative emphasized that the 1951 Convention relating to the Status of Refugees and the Covenant had to be considered jointly, since, although each of those instruments had its own special place, they complemented and reinforced each other. The Canadian Government's position with regard to the backlog of cases was that the situation was complicated by the very large number of people already in Canada and seeking to remain. The Government was, however, doing its utmost to process quickly and without discrimination the cases of thousands of refugees. Each case was considered individually to determine whether the asylum seeker met the required conditions for obtaining the status applied for. Priority had been given to English-speaking immigrants, perhaps because it was easier and quicker to deal with applications when a decision could be taken without recourse to the services of an interpreter. No discrimination was in fact involved since the Government was attempting to deal as fast and as effectively as possible with the situation, and those concerned were meanwhile living, working and in some cases receiving social welfare benefits in Canada.

Right to life

64. With regard to that issue, members of the Committee wished to know, in the light of the defeat in the House of Commons of a motion to reinstate capital punishment, whether there were any prospects for the early ratification by Canada of the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.

65. In his reply, the representative of the State party said that capital punishment had been abolished in Canada, except for certain offences which came under the National Defence Act. Although the competent authorities were currently giving careful consideration to the Second Optional Protocol in the light of the National Defence Act, with a view to possible accession, no decision had yet been taken.

Liberty and security of the person

66. With reference to that issue, members of the Committee asked what the grounds were for imposing an indeterminate sentence of detention; how the maximum length of such a sentence was related to the maximum fixed term established for a given offence under the Criminal Code; whether there were any maximum limits on the length of pre-trial detention; what was the average length of pre-trial detention; how much variation there was in this regard among the various provinces; and what was the average duration of criminal proceedings. They also requested clarification of the reference to "specified restrictions" on the right of detainees to apply for a writ of *habeas corpus* in section 708 of the Criminal Code and of the current practice of the Yukon government of incarcerating individuals who were unable to pay fines. They

also wished to know at what age a youthful offender was considered to be a juvenile delinquent under Canadian law; whether there was an age below which pre-trial detention was not authorized; and what was the proportion of indigenous persons to non-indigenous persons imprisoned in the Yukon and Northwest Territories.

67. Observing that the Supreme Court had interpreted the term "detained" broadly, members wished to know whether that broad interpretation was actually applied in all cases, particularly to arrested entry seekers; whether police officers who had the power to arrest and detain at the point of entry were obliged to follow a code of conduct; whether there was a complaints mechanism open to individuals who claimed to be victims of arbitrary arrest; what guarantees there were for preventing abuses during detention at police stations; and whether there was any provision for compensation for arbitrary arrest. Further information was also requested on provisions governing the obligation to obtain a person's consent before subjecting him to medical experimentation.

68. In his reply, the representative of the State party explained that the clause of the Criminal Code under which an indeterminate sentence of detention was imposed on a person considered a "dangerous offender" applied only to persons found guilty of a serious personal injury offence which was part of a pattern of generally aggressive, violent or brutal behaviour or failure to control sexual impulses. The Supreme Court had decided that the clause was compatible with the guarantees in the Charter of Rights and Freedoms against cruel and unusual treatment or punishment.

69. Section 503 of the Charter of Rights and Freedoms provided that a detained person had to be brought before a justice within 24 hours. Extremely strict time-limits for reviewing decisions were fixed in each case to prevent arbitrary detention, and if the judge considered that continued detention could not be justified, he was obliged to order the release of the accused or issue directives for the trial to take place as soon as possible. The average duration of pre-trial detention varied from province to province, ranging from an average of 3 days in Nova Scotia to 20 days in the Northwest Territories. In all cases, arrested persons were detained in strict compliance with the law and brought before a magistrate very quickly. A petitioner applying for a writ of habeas corpus had first to prove that he actually was under detention and, second, to establish probable grounds for his claim that his detention was illegal. A ruling by the Supreme Court in 1985 had confirmed that any individual who was physically on Canadian territory, in particular an asylum seeker, had access to the same rights as residents. Although it remained a statutory option, the incarceration of fine-defaulters was no longer imposed by the Yukon courts because it was fundamentally unfair to certain racial and socio-economic groups, particularly aboriginals. Juveniles between the ages of 12 and 18 were dealt with by juvenile courts and could be detained prior to trial in the same conditions as adults. The percentage of aboriginals in the prison population of the Northwest Territories and the Yukon was around 45 per cent but that figure had to be seen in relation to the total indigenous population of those territories, which was far higher than in any other region of Canada.

70. The Canadian authorities were currently preparing reports on the human rights implications of several medical/legal issues. No medical research

performed on or in any way affecting a human being was authorized by the civil and, where necessary, penal authorities unless the person concerned had given his informed consent.

Right to a fair trial

71. With regard to that issue, members of the Committee wished to receive information concerning the guidelines relating to compensating persons for wrongful conviction or imprisonment and on the experience to date in applying such guidelines at the federal and provincial levels. They also wished to know whether there was a system of legal assistance for persons who could not defray the costs of their trial; what guarantees there were for the independence and impartiality of the judiciary, in particular of the courts dealing with immigration or refugee issues and of the Human Rights Tribunals; what the procedures were for appointing both Supreme Court judges and lower court judges; what were the current provisions regarding a judge's immunity and pension rights; and whether any serving judges were immigrants from Asian or African countries. In view of the fact that the judicial system varied from province to province, it was also asked whether judges were qualified to perform their functions in any province; whether the various provincial systems were totally independent from one another; and whether the Federal Government had considered setting up uniform minimum standards regarding the criteria for the independence of the judiciary and for the examinations system for admission to the bar. Additional information was also requested concerning the equality of individuals before the courts and on the issue of discrimination in the administration of justice.

72. In his reply, the representative of the State party stated that in March 1988, the federal and provincial ministers responsible for the administration of justice had adopted a set of guidelines for persons wrongfully convicted and imprisoned. In the case of non-pecuniary damage, compensation could not exceed $Can 100,000, but there was no recommended limit in the case of pecuniary damage, compensation being then decided according to the individual case. Legal aid was considered an essential feature of the Canadian legal system, and such services were basically the responsibility of the provincial authorities.

73. Responding to questions raised in connection with the independence and impartiality of the judiciary, the representative pointed out that under articles 96 to 100 of the 1986 Constitution Act, the Governor General appointed the judges to the higher, district and county courts in each province. It was for the Federal Parliament to legislate on the salaries, allowances and pensions of judges of the higher, district and county courts. The salaries and allowances of federal judges were fixed by law and could not be altered by administrative decision. Judges appointed at federal level could not be removed from their posts against their will before the compulsory retirement age of 75, except as a result of an independent judicial inquiry. While uniform criteria were applied to federal judges with regard to their appointment, term of office and salary, the conditions applying to provincial lower court judges varied from province to province. Any member of a provincial bar could appear before the Federal Court of Appeal or the Supreme Court. The constitutional obstacles and practices preventing the mobility of judges were to be gradually eliminated.

74. Replying to other questions, the representative referred to the issue of the slowness of justice and explained that Canadian courts gave priority to settling criminal cases quickly and that the Supreme Court had been able to eliminate almost the entire backlog of criminal cases. The authorities had become more aware than in the past of the need to ensure that the judiciary and the bar were truly representative of Canadian society. Following the Marshall case, measures had been taken in Nova Scotia to ensure that race, colour, religion, beliefs or national origin would have no influence on the judgements of the courts in the province. In the cases where the police had fired on blacks who had broken the law, the policemen concerned had been arrested and had faced criminal prosecution following an inquiry carried out by the interior provincial police. The concern aroused by such incidents had led to the setting up, on 13 December 1988, of a Task Force on race relations and policing. A bill had been tabled in Parliament following the Task Force's report and passed in June 1990, replacing the Police Act. New principles had thus been adopted regarding, inter alia, the representation of minority communities in police forces and disciplinary measures to be applied in order to prevent the recurrence of such incidents.

Freedom of movement and expulsion of aliens

75. With reference to that issue, members of the Committee requested clarification of the provisions governing the expulsion of aliens and asked how the right of aliens to appeal against an expulsion order was ensured in practice; whether such appeal had suspensive effect; and whether there were any differences among the provinces in the legislation or the rules regarding freedom of movement and expulsion of aliens.

76. In his reply, the representative of the State party said that some categories of aliens, particularly foreign residents, could appeal to the Immigration and Refugee Board, a course of action which automatically entailed the suspension of the expulsion order. All other aliens could request the Federal Court of Appeal for a review of the decision and could also obtain a suspension of the expulsion order for 72 hours. There were no differences among the provinces in the legislation or the rules regarding freedom of movement and expulsion of aliens, which came under federal law alone.

Freedom of assembly and association

77. In connection with that issue, members of the Committee wished to receive detailed information on the legislation in the provinces of Ontario, Nova Scotia and Prince Edward Island, which appeared to establish a trade union monopoly contrary to paragraph 3 of article 22 of the Covenant. It was further asked whether the right to collective bargaining was guaranteed under section 2 (d) of the Charter of Rights and Freedoms; and why the right of peaceful assembly had to be balanced against the right to make use of public property.

78. In his reply, the representative of the State party explained that in the provinces of Ontario, Nova Scotia and Prince Edward Island, any trade union had to be representative of the employees concerned, that machinery had to exist whereby another trade union could in turn become representative of those employees, and that the workers concerned should generally approve the approach adopted. The right to freedom of association in Canada included the

right to collective bargaining. Although everybody was free not to belong to a trade union, a sum equal to the amount of union dues was deducted from each salary, but any person who for social, religious or cultural reasons refused to join a trade union could declare himself a conscientious objector and be exempted from paying union dues. Concerning restrictions on assembly in certain places, the Supreme Court decision in 1982 on a case concerning the requirement to obtain a permit to hold a march in the city of Montreal would undoubtedly undergo further review in the future.

Freedom of expression

79. In connection with that issue, it was asked whether the dissemination of "false news" was a crime under Canadian law and whether everyone had access to information held by public authorities.

80. In his reply, the representative explained that the dissemination of "false news" was an offence under Canadian law although it was a difficult offence to prove. The term "false news" did not extend to false information disseminated in the belief that it was true. Access to information was covered by laws on freedom of information and on privacy. A commissioner for access to information had been appointed. Anyone could obtain information held by government institutions provided that the information was not detrimental to federal, provincial or international relations, did not concern a current criminal investigation, and was not protected by the Privacy Act.

Protection of family and children

81. With reference to that issue, members of the Committee wished to know whether all discrimination between spouses and all differences in the status and rights between children born in and out of wedlock had been eliminated under the various federal, provincial and territorial laws; and whether there had been any further development of case law since the submission of the second periodic report confirming that discrimination on the grounds of marital and family status was prohibited under section 15 of the Charter of Rights and Freedoms.

82. Observing that the Charter of Rights and Freedoms did not seem to provide any specific protection for the rights of the family, members asked whether those rights were recognized in any other part of Canada's law. It was also asked whether recent changes in the laws governing immigration had deprived the dependants of immigrants who had already been admitted to Canada of the priority which they had previously enjoyed; how the immigration authorities would treat an application from members of an immigrant's family who had not yet joined the immigrant in Canada; whether the behaviour of an immigrant's children might affect his right to stay in Canada; and what measures had been taken to promote family unity among indigenous groups. Further information was also sought about a recent amendment to the Divorce Act of 1985, under which a person might be refused a civil divorce if he or she had refused to cooperate in the removal of a religious barrier to the remarriage of the other spouse; and about the problem posed by minors joining religious cults without the consent of their parents.

83. In his reply, the representative of the State party said that recent provincial and territorial legislation had eliminated all distinctions between

children born in and out of wedlock, with a few exceptions relating primarily to cases where it was difficult to establish paternity. Section 15 of the Charter of Rights and Freedoms did not specifically refer to discrimination on the grounds of marital or family status, and the Supreme Court had not yet had an opportunity to pronounce on the matter.

84. Priority processing abroad of the dependants of immigrants had been initiated and was speeding up the resolution of cases in which family members residing in their country of origin were enduring life-threatening situations or where minors were allegedly being abused or left unattended. In the past, certain indigenous children had been sent to residential schools outside their communities, where they had been cut off from their families, culture and religion. Currently, however, there were 280 band-managed schools providing education to 36 per cent of indigenous students. Efforts were under way to establish additional agencies designed and managed by indigenous people, which would provide services to all indigenous children and their families in their own communities.

85. The purpose of the recent amendments to the Divorce Act was to avoid the application of undue pressure on a spouse to obtain the latter's agreement to an unfair divorce settlement in order to conform to the dictates of a religion. Allegations to the effect that the Canadian immigration services had threatened foreign families and civilians were unfounded. If such threats were ever made, corrective action would be taken, and disciplinary measures and civil liability would ensue. With reference to article 18 of the Covenant, some parents had sought court rulings in cases where necessary medical attention had not been administered to a child because of religious beliefs. The courts had dealt with those cases by endeavouring to strike a balance between the right of citizens to freedom of religion and the need for the State to protect members of the community, particularly those in a situation of dependence.

Right to participate in the conduct of public affairs

86. In connection with that issue, members of the Committee wished to know whether the decision in Osborne v. The Queen applied to public servants in general or was restricted to a specific category of public servant; whether that case had any bearing on the right of a public servant to stand for election; and whether a public servant was required to resign in order to become a candidate. Clarification was also sought as to the compatibility with the Covenant of the decision in Fraser v. Public Service Staff Relations Board, in which the Supreme Court had held that limits might be imposed on the right of a public servant to speak on public issues in the interest of maintaining an impartial public service.

87. In his reply, the representative pointed out that the absence of political partisanship, provided for in section 33 of the Public Service Employment Act, was a convention adhered to by all public servants to ensure the neutrality and professionalism of their work. Public servants other than deputy ministers could, however, apply for a leave of absence in order to seek electoral office. In practice, leave was generally granted and the applicant allowed to return to public service if his bid for election was unsuccessful. The Supreme Court was currently examining existing legislation to determine whether it was adequate under the Canadian Charter and article 25 of the

Covenant. In the Fraser case, the Supreme Court had found that, in the circumstances, the Government was justified, as an employer, in expecting that its employees should not engage in an activist campaign against one of its major policies.

Right of persons belonging to minorities

88. With regard to that issue, members of the Committee wished to know what factors and difficulties, if any, existed with respect to the implementation and enjoyment of the rights under article 27 of the Covenant. They also inquired about the content of the self-government proposals being negotiated with Indian communities and the current prospects for a successful outcome of those negotiations; how many members of Indian minority groups had been elected to the Senate or the House of Commons; and what legislative measures were envisaged by the Canadian Government for making progress in the recognition of linguistic rights.

89. In addition, further clarification was requested regarding the programme of assistance to minorities. It was asked, in particular, whether that programme contained measures, other than mere assistance, that would ensure the minority groups' participation and full incorporation into Canadian society; whether there was any relationship between indigenous treaty rights and self-government proposals and the settlement of land claims; who had control over the natural resources of the indigenous areas; what measures had been taken with a view to guaranteeing the right to aboriginal self-government; and whether the First Ministers' Conference, mentioned in the second periodic report, had in fact been convened. Further information was also sought on the representation of indigenous people in the provincial governments and, in particular, on whether their representation depended on the electoral system or on other factors.

90. In connection with the concept of minorities in Canada, it was asked whether, over and above their status as cultural minority groups, the indigenous minorities were recognized as a people; whether any consideration had been given to amending the Constitution in order to take account of Canada's multicultural heritage; what rights and privileges were enjoyed by languages other than French and English; to what extent Indians could use their language to communicate with the authorities; whether there were any books or newspapers published in languages other than French and English; how the protection of minority-language educational rights mentioned in the report was assured; what cultures were covered by the Multiculturalism Act; whether French speakers were considered as a minority in Canada or English speakers regarded as a minority in Quebec; what were the activities and functions of the Canadian Heritage Languages Institute; and what was the meaning of the term "visible" minorities, used in the second and third reports.

91. With reference to the revision of the Indian Act as a result of the Committee's views, members asked whether there had been any perceived difficulties relating to the fact that Indian rights were restored to the first generation only; how the changes had been received by the various Indian bands; and why the Indian Act was excluded from the Canadian Human Rights Act and what the implications of that exclusion were. Concerning the recent events in Oka, members wished to know what had been the reasons underlying the conflict; what were the prospects for a solution; why civil rights had been

suspended without any parliamentary debate; and why the National Defence Act had been invoked rather than the Emergency Measures Act.

92. In his reply, the representative of the State party pointed out that Canada was a country with a multicultural heritage and an evolving demographic make-up. Substantial resources were devoted to protecting and promoting, in accordance with article 27 of the Charter of Rights and Freedoms, the cultural diversity that constituted the national heritage. The objective was, therefore, to give everyone the possibility and the right to participate fully, and on an equal footing, in the social, economic and political life of the country. For that purpose, Parliament had in 1988 adopted the Canadian Multiculturalism Act, under which a minister was responsible for administering and coordinating multicultural programmes executed by government agencies responsible to Parliament. In a period of economic constraints, rigorous prioritization was, however, necessary, and controls on programmes might have the effect of limiting progress to a greater extent than was desirable. Although article 27 of the Charter stated that the interpretation given to the Charter had to be consonant with the promotion, maintenance and enhancement of the cultural heritage of Canadians, it had not yet been possible to guarantee, in the Constitution, new rights for the indigenous peoples.

93. In response to other questions, the representative explained that the indigenous peoples of Canada did not consider themselves to be minorities and were not regarded as such by the authorities. The objective of community self-government was to develop a new relationship between Indian communities and the Federal Government by working out practical new arrangements for Indian government at the community level. Such arrangements were given effect through specific legislation that would replace the Indian Act for that community. Substantive negotiations were under way on 8 projects, involving 30 bands. An additional 15 projects involving 29 bands were at the framework negotiation stage, and projects involving some 170 other bands were at the initial development stage. In two recent cases, in which the Supreme Court had for the first time interpreted the expression "existing rights of the Indians" in article 35 of the Constitution, it was held that what characterized a treaty was the intention to create obligations, as well as a certain degree of solemnity. Amendment of the Indian Act designed to eliminate discrimination against Indian women, to restore the rights of the bands, and to grant them greater autonomy had posed problems because some bands were opposed to the inclusion of women and children in their lists. That would entail the reintegration of 76,000 persons into communities which had not yet been provided with resources for such an increase.

94. Referring to questions raised in connection with the proportion of seats in Parliament held by members of minority groups, the representative pointed out that there were 295 seats in the House of Commons, 3 of which were held by indigenous people. In the Senate, they held 3 out of 111 seats. In recent elections in the Province of Manitoba, indigenous people had obtained 3 out of 57 seats in the legislature, and in the Northwest Territories, where they formed a majority of the population, indigenous people held 16 out of 24 seats in the legislature.

95. The 1988 Official Languages Act represented significant progress in the recognition of the linguistic rights of all Canadians. With the exception of the Northwest Territories, the official languages were English and, in Quebec,

French. Although only the English-speaking and French-speaking communities could deal with the authorities in their own language, the right to address courts in one's mother tongue was guaranteed by the Constitution, and the possibility of using indigenous languages before the courts was being increasingly provided for, quite apart from the use of an interpreter guaranteed by the Charter of Rights and Freedoms.

96. The Federal Government had initiated and maintained important programmes to preserve and enhance the heritage languages of Canada's communities that provided financial support and technical assistance to many communities for that purpose. Six indigenous languages enjoyed official status in the Northwest Territories, where the study of an indigenous language was compulsory for all schoolchildren. In the other regions of the country, more attention was beginning to be given to the study of indigenous languages in primary and secondary schools, which now offered teaching in those languages to more than half of the Indian pupils. There were, however, practical limitations on the aid provided by the Government for such purpose, due particularly to the fact that some languages did not have a written form. The Canadian Heritage Language Institute, established for the purpose of promoting all the languages that contributed to the linguistic wealth of the country, subsidized the preparation of language teaching material, and programmes had also been developed to support the languages of Canada's aboriginal communities.

97. In connection with the situation of the Mohawk Indians and the incidents that had recently taken place at Oka, the representative pointed out that the rights of the Mohawk community had never been suspended and that the Mohawks had never been forbidden access to the courts. It was difficult to assess after the event whether the invocation of the National Defence Act had or had not been justified since the developments that had led up to the situation were extremely complex. The Oka events had caused the authorities, as well as the leaders of the indigenous population of Quebec and of Canada, to reflect on appropriate ways of settling territorial conflicts and to reconsider the legislation in that field. Although the Government was determined to find a prompt, just and equitable solution to territorial conflicts, the situation was still very difficult and it seemed unlikely that the Constitution would be amended in the near future so as to allow all applications for autonomy to be satisfied. Nevertheless, the Federal Government was already planning to transfer certain responsibilities to the territories, particularly with regard to economic development.

Concluding observations

98. Members of the Committee expressed their thanks to the representatives of the State party for their outstanding cooperation in presenting the second and third periodic reports of Canada and for having responded to the Committee's concerns and questions in an objective, frank and precise way. The two excellent reports of Canada were consistent with the Committee's Guidelines regarding the form and contents of reports from States parties under article 40 of the Covenant and had given detailed information about many issues, particularly the jurisprudence of domestic courts in respect of the various rights embodied in the Covenant. The reports were most usefully supplemented by the information provided by the representatives in their oral

statements. It was clear that Canada took its obligations under the Covenant very seriously and that, since the submission of Canada's initial report, many measures had been taken to protect human rights.

99. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been fully allayed. The situation with regard to Canada's minorities, and especially its indigenous peoples, was still a source of concern. The hope was expressed that the Federal Government would continue its constitutional reforms to facilitate the indigenous peoples' movement towards autonomy and that problems encountered by indigenous peoples would be rapidly settled in a spirit of equity and respect for the rights enshrined in the Covenant, in particular in its articles 2, 26 and 27. Persons belonging to ethnic, religious or linguistic minorities should not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language, and assistance programmes should contain measures that would ensure the minority groups' participation and full incorporation into society. Section 33 of the Canadian Charter of Rights and Freedoms, which provided for a derogation clause, did not appear to be compatible with article 4 of the Covenant. Although Canada's policy towards asylum seekers was very liberal, the accumulation of applications for asylum and the system adopted by the Canadian Government to accelerate the processing of applications for asylum, in which a kind of target group was selected, were sources of concern. Other areas of concern included trade union rights and the right to collective bargaining; the question of the applicability of article 14 of the Covenant to administrative decisions; the differences between provincial legislation and federal legislation in the field of human rights; the discrepancies between different provinces in respect of the length of pre-trial detention; and the minimum age for pre-trial detention.

100. The representative of the State party thanked the members of the Committee for the dialogue they had carried on with the Canadian delegation and assured the Committee that the issues that had not been covered during the consideration of the reports would be dealt with in the next periodic report. The Canadian authorities took their role in promoting the provisions of the Covenant at an international level very seriously and the appreciation expressed by the Committee had been a great encouragement in that task.

101. In concluding the consideration of the second and third periodic reports of Canada, the Chairman expressed satisfaction at the outcome of the dialogue with the Canadian representatives. The reports, together with the explanations provided by the delegation, had given the Committee useful information about national practice and the implementation of the Canadian Charter of Rights and Freedoms. The discussion with the delegation had also allowed the Committee to shed new light on the relationship between articles 1 and 27 of the Covenant.

Finland

102. The Committee considered the third periodic report of Finland (CCPR/C/58/Add.5) at its 1014th to 1016th meetings, held on 25 and 26 October 1990 (see CCPR/C/SR.1014-1016).

103. The report was introduced by the representative of the State party, who drew attention to the ratification by Finland, since the consideration of its second periodic report, of the European Convention on Human Rights and the Sixth Protocol to that convention concerning the abolition of the death penalty, as well as to the establishment of a Committee on International Human Rights Issues. The representative further noted that the existing Self-Government Act relating to the Aaland Islands would be replaced by a new law with a view to increasing the autonomous status of the province; that the Provincial Administrative Courts had in 1989 been detached from the respective Provincial Administrative Boards and now acted as independent courts dealing with questions relating to all rights; and that a new State of Defence Bill, taking account of the requirements of article 4 of the Covenant, had recently been presented to Parliament. A new Aliens Act was also under consideration in Parliament and there were plans to improve the prison system and penal sanctions in general.

104. The Finnish Government had also amended the existing law on military disciplinary procedures so that a conscript now had the right to have any decision involving deprivation of liberty examined by a court. Account had been taken of the Committee's decision in that regard. The new Passport Act of 1987 was based on the principle that a citizen's right to travel abroad was a basic right the exercise of which could be restricted only for very serious reasons. Recent legislation relating to the right to a fair trial had made the Finnish reservation to article 14 (3) (d) unnecessary. New legislation had been adopted in the field of personal data protection, providing for the appointment of a Data Protection Ombudsman. New legislation relating to conscientious objection had also entered into force at the beginning of 1987 for a trial period of five years. With respect to freedom of expression, the new Pre-Trial Investigation Act provided that information on pre-trial investigation must be so distributed that no one was suspected of an offence without adequate reason and that no unnecessary harm was caused. In addition, the 1987 Act on Censorship of Video Programmes and other Pictorial Programmes made the distribution of video cassettes and similar films subject to approval. Lastly, the representative noted that some of the traditional limitations concerning aliens had to some extent been abolished and that equality between spouses had been further strengthened.

Constitutional and legal framework within which the Covenant is implemented

105. With regard to that issue, members of the Committee wished to be provided with illustrations of the activities of the Committee on International Human Rights Issues since the submission of the third periodic report and additional details concerning the Supreme Administrative Court case where the Covenant was applied for the first time by a Finnish court. They also wished to receive details concerning some of the decisions rendered by the Parliamentary Ombudsman where provisions of the Covenant had also been taken into account and also asked whether any suits had been filed pursuant to article 93 (2) of the Constitution Act, in particular proceedings involving charges of violations of the Covenant.

106. In addition, members of the Committee wished to know whether legal or other measures had been adopted to remedy the specific violations of the rights of individuals on which the Committee had commented; what was the position of the Covenant in relation to domestic legislation in case of a conflict; what legal remedy could be sought for alleged violations of articles of the Covenant which had not been incorporated into domestic law; how remedies were coordinated in practice and whether all remedies were equally available to aliens and nationals; what was the legal difference between a decree as opposed to a law; whether the review of legislation before the ratification of the European Convention on Human Rights had included consideration of the situation of people deprived of their freedom; how the independence of the judges in the Provincial Administrative Courts was guaranteed; whether any changes had been considered to chapter II of the Constitution inasmuch as the enumerated rights appeared to be applicable to Finnish citizens only; whether there were any plans to make the Committee on International Human Rights Issues an interministerial body; what attitude was taken by that Committee and the Government regarding the use of development aid to promote human rights; and what activities were undertaken by Finnish non-governmental organizations in promoting human rights.

107. In his reply, the representative said that since its establishment, the Committee on International Human Rights Issues had held about 10 meetings annually for the effective monitoring of developments relating primarily to the international dimension of human rights; all the national aspects had simultaneously been given critical consideration. There were four main areas of interest which the Committee kept under scrutiny: the activities, respectively, of the United Nations, the Council of Europe and the Conference on Security and Co-operation in Europe (CSCE), and the relationship between development aid and human rights. It had held a seminar on the last topic and planned to publish a new Finnish version of a compilation of international human rights instruments and to organize research on human rights questions once the necessary financial resources had been allocated. The Committee had also given its opinion on Finnish draft reports to various United Nations bodies, such as the present report, and had proved to be an expert body whose opinions had been most valuable for the work of the Ministry of Foreign Affairs. It was not considered necessary to create a new interministerial committee, and cooperation between the Ministries of Justice and Foreign Affairs was considered adequate.

108. In reply to the question concerning the application of the Covenant in a domestic court of law, the representative explained that the 1988 decision of the Supreme Administrative Court had concerned the cancellation of a passport, a matter which at that time had been regulated by government decree only, not by law. The court had argued that there was no conflict of norms in the case because the restrictions set forth in article 12 of the Covenant were applicable. The basic attitude of the judiciary and the courts of law was becoming increasingly favourable to making the Covenant directly applicable, but the question was still under discussion. Referring to the question on the Parliamentary Ombudsman, he stated that the Ombudsman did not normally refer to international human rights standards if there was an equivalent provision in Finnish law. He did occasionally cite international instruments in order to promote greater awareness of their provisions. For example, the Ombudsman had in the past made references to the rights of non-citizens and of persons deprived of their liberty as well as to the independence of judges, as contained in various articles of the Covenant. No suits had been filed under

article 93 (2) of the Constitution Act in respect of alleged violations of the Covenant.

109. In response to other questions, the representative explained that Finland did not have a system of constitutional review by the judiciary; it was up to the Constitutional Committee of the Parliament to comment on the compatibility of proposed legislation with the Constitution. Once legislation had been enacted, courts were bound to apply it without questioning its constitutionality. The difference between decrees and laws was that the former were issued by the President or the Government and the latter by Parliament. The Supreme Administrative Court had held that it was possible to apply the Covenant and that a court could therefore ignore a government decree on the basis of the Covenant's provisions, but the position of the Covenant in the hierarchy of norms in the Finnish legal system was still a matter of debate. The Incorporation Act merely stated that those provisions of the Covenant which belonged to the domain of legislation should have the force of law. At present, a review was being undertaken to ensure that foreigners enjoyed constitutional protection equal to that of Finnish citizens. The rights of a person to liberty might be curtailed only to the extent necessary for the fulfilment of the purpose of his detention. The Minister for Foreign Affairs had recently said that Finnish views or concepts concerning human rights or democracy should not be used as criteria for punishment or reward when deciding on development cooperation activities.

110. Referring to the separation of the Provincial Administrative Courts from the Provincial Administrative Boards, the representative said that this had occurred at the logistic and administrative levels; a major purpose of the change had been to emphasize, especially in the public mind, the judicial function and independence of those Courts. The administrative judges secured their independence in the same way as judges in the ordinary courts; they had full tenure of office, which was more comprehensive than in the case of state officials, and they could not be subjected to disciplinary proceedings. There were many different remedies which overlapped to some extent, but the Government considered it important for individuals to be able to choose among them. With regard to remedies in certain specific cases, decisions were still pending. The request for compensation in such cases had been made on the basis of claims that the injury suffered by the petitioner was undue deprivation of liberty, but since the damage suffered was not a material one it was difficult to assess monetary compensation.

Self-determination

111. In connection with that issue, members of the Committee wished to know whether the new Self-Government Act for the Aaland Islands had been enacted by Parliament.

112. In reply, the representative said that the new bill in respect of the Aaland Islands had been submitted to Parliament on 31 May 1990. The debate in Parliament was continuing and was expected to finish towards the end of the year, with the new law entering into force in the course of 1991.

State of emergency

113. With regard to that issue, members of the Committee asked what the current status was of the bills relating to states of public emergency

described in paragraphs 26 and 27 of the report; under what conditions of economic crisis the draft State of Defence Act would apply and what articles of the Covenant would be derogated from under that Act; and what proposals for the internment of persons who were deemed to be liable to commit certain offences that draft Act contained and what remedies would be available to individuals thereunder.

114. In his reply, the representative said that the bills were expected to pass by the end of the year. The new Defence Bill reflected the desire of the Finnish authorities to provide for both defence needs and the protection of the fundamental rights of individuals and was consistent with the limitations in article 4 (2) of the Covenant. Several safeguards were expressly provided for and the supremacy of international obligations was guaranteed. "Economic crisis" referred to such situations as the total breakdown of the energy supply or similar catastrophes which would threaten the existence of society, and which the authorities could not cope with under normal powers. A person could be interned only as a last resort, the right of appeal would be guaranteed, and the usual rules for compensation would be applicable. The bill not yet having been adopted, the representative assured the Committee that all of its comments would be taken into account by the Finnish authorities.

Non-discrimination and equality of the sexes

115. With regard to that issue, members of the Committee wished to know whether there were any plans to extend to other aliens the right to participate in municipal elections currently recognized in the case of citizens of other Nordic countries. They also wished to receive further information on the proposal by the Task Force for Penal Code Reform for a new penal provision on discrimination, as mentioned in paragraph 132 of the report, and on the law exempting Jehovah's Witnesses from all national service and of the reasons for the difference in treatment between Jehovah's Witnesses and other conscientious objectors. They also noted that the Status of Conscientious Objectors Act of 1991 should be consistent with the need for the length of alternative service to be proportionate to that of military service. Members wished to know whether the new penal provision would apply also to banks, which appeared to require job applicants to produce an attestation proving they were not carriers of the HIV virus.

116. In his reply, the representative stated that the new penal provision on discrimination was being discussed as part of the total revision of the Penal Code. The new provision would have a broader application than the present law and would deal with discrimination based on race, national and ethnic origin, skin colour, language, sex, age, kinship, or state of health in the exercise of a profession, the performance of a public function or the organization of a public event.

117. Replying to the question on Jehovah's Witnesses, the representative said that their special status was due to the fact that this community had shown great coherence in its beliefs; there was no danger that the law would be abused for the purpose of evading military or civilian service. Civilian service was longer than military service but was less exacting. There was no alternative to imprisonment for conscientious objectors refusing to perform any kind of service. AIDS and HIV infection could be considered as forming part of a person's state of health and, as such, could be mentioned in the new

draft provisions; the authorities were considering the possible forms of discrimination in that respect. The Ombudsman had been seized of a complaint that disablement was not expressly mentioned in the new provision on discrimination.

Right to life

118. With reference to that issue, members of the Committee asked whether there were any plans by Finland to ratify the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. In addition, members of the Committee wished to know whether there were any plans to establish a special medical ethics committee, within the National Board of Health, to advise in the matter of human embryo research and whether there was a law or military code authorizing the imposition of the death penalty in wartime.

119. In his reply, the representative said that the Finnish Government intended to ratify the Second Optional Protocol to the Covenant in 1990. Reforms were being undertaken to regulate the use of artificial procreation methods and it was quite possible that a medical ethics and health law committee would be established. The death penalty had been totally abolished and therefore was eliminated, even in wartime.

Liberty and security of the person and treatment of prisoners and other detainees

120. With regard to that issue, members of the Committee wished to know what was the current status of the bill amending the Law on Military Disciplinary Procedure and the relevant Ordinance; whether the proposal relating to reforming the custody arrangements under the Aliens Act had been followed up; what the plans were to develop the penitentiary system and penal sanctions discussed in paragraph 69 of the report; and what was the maximum limit to the period of preventive detention under the Dangerous Recidivists Act.

121. In addition, members of the Committee wished to know whether the recent decision to deny asylum to two Soviet hijackers was based on factual or legal considerations; why HIV infection and AIDS were not classified as contagious diseases; and whether a law existed providing for the solitary confinement of dangerous recidivists. Members wished to receive information on measures providing for incommunicado detention; penalties other than imprisonment; the powers of prison boards to hold an offender in preventive detention and the possibilities of appeal against their decisions; the implementation of the Aliens Act; the possibilities of appeal against a decision of obligatory confinement under the Mental Health Act; and the reasons for the decrease in the prison population. Clarification was also requested of the reference to "violence" in paragraph 63 of the report and the implications of a person being considered a "health hazard".

122. In his reply, the representative stated that the legislation under which a conscript could have a decision on military confinement examined by a court had come into force on 1 May 1990. A new bill had been submitted in April 1990 to reform custody arrangements under the Aliens Act. The bill, providing for a partial reform of the Young Offenders Act, had been ratified, and the Government was planning to introduce several other reforms in the criminal justice system. It was also planned that a maximum limit would be imposed on the length of incarceration which, in practice, would mean that

detainees could be released on probation after serving one half or two thirds of the sentence.

123. In reply to questions concerning the Dangerous Recidivists Act, the representative explained that the decision to place a person in solitary confinement was initially the responsibility of a tribunal but that an administrative organ - a prison board - then took the final decision. Appeal was possible against the decision of the tribunal. There were plans to abolish the penalty of preventive detention and to introduce, on an experimental basis, sentences that would take the form of community service. The fall in the number of prison sentences being served was due to frequent recourse to penalties other than imprisonment and the fact that the sentences imposed were shorter. The period in which an appeal could be made against a decision to confine a person forcibly in a psychiatric hospital was to be shortened in order to speed up the procedure. AIDS and HIV infection were not classified as contagious diseases dangerous to public health because the Contagious Diseases Act, which was strictly interpreted, covered only diseases whose spread could be prevented by measures directed at a person having, or suspected of having, the disease.

Right to a fair trial

124. With regard to that issue, members of the Committee asked for clarification as to whether the amendments to the Cost Free Proceedings Act, discussed in paragraph 84 of the report, had actually resulted in the withdrawal of Finland's reservation to article 14 (3) (d) of the Covenant, and what consideration was currently being given to the withdrawal of the Finnish reservation to article 14 (7) of the Covenant. They also wished to receive further information concerning the application in practice of the Publicity of Court Proceedings Act (No. 945 of 21 December 1984).

125. In his reply, the representative stated that the reservation by Finland in respect of article 14 (3) (d) had become unnecessary and had been withdrawn on 1 August 1990. The Government did not intend to withdraw the reservation to article 14 (7) of the Covenant since the paragraph in question did not appear to be in conformity with the spirit of Nordic law, and the present legislation was not contrary to the principle of *ne bis in idem* on which article 14 (7) of the Covenant was based. The application of the Publicity of Court Proceedings Act had presented few problems and there were very few public hearings at the appellant level. Nevertheless, a committee had recently been appointed to revise the procedures of the courts of appeal and other courts with a view to enhancing the public nature of the proceedings.

Freedom of movement and expulsion of aliens

126. With reference to that issue, members of the Committee wished to be provided with information concerning procedures for appeal against adverse decisions taken under the Passport Act and Passport Decree, which entered into force on 10 October 1987. With regard to the grounds for refusing a passport under the new Passport Act, members of the Committee noted that these grounds could give rise to abuses by the authorities and seemed to be incompatible with article 12 of the Covenant. They also wished to know what remedies were available in case an alien's work or residence permit was withdrawn, which appeared to have the effect of an expulsion decree.

127. In his reply, the representative said that the Passport Act provided for an appeal to the Provincial and the Supreme Administrative Courts against expulsion orders issued thereunder. Appeals against expulsion or the withdrawal of residence or work permits under the Aliens Act could, at present, be made only to the Supreme Administrative Court; however, the Act was currently undergoing review and amendment by Parliament. Applications for passports were nearly always satisfied and the Ombudsman had urged that the grounds for refusal should be interpreted in a very restrictive manner. Prior to the adoption of the present Act the issuance of passports had been regulated by decree, and it was felt that the adoption of legislation had been a progressive step which had brought Finnish practice into line with article 12 (3) of the Covenant. While it was possible to abuse the system, legal remedies were available for individuals who felt that their rights had been infringed. However, the Committee's concerns on the matter would be brought to the attention of the Government.

Right to privacy

128. Regarding that issue, members of the Committee wished to know whether any further action had been taken on the proposal of the Task Force on the Reform of the Penal Code relating to the adoption of new penal provisions against unlawful interference with privacy. They also wished to know whether the police ever had the right to apply for permission to tap telephones in order to investigate very serious crimes; what were the powers of the security forces in that same respect; what was the case law on that subject; and whether Finnish legislation on the banking sector contained provisions imposing an obligation to obtain judicial authorization in order to be able to make public the contents of a bank account, for example at a trial.

129. In his reply, the representative said that privacy would be dealt with in the second phase of the reform of the Penal Code to be concluded in 1991. The offence of "violating the privacy of communications" would have more extensive scope, applying, for example, not merely to the home but also to other places and situations. Finland was one of the few countries maintaining an unconditional *de jure* and de facto prohibition against telephone tapping and there was at present no legislation providing for exceptions. The Finnish Data Protection Act was based on the guidelines laid down by the Organisation for Economic Cooperation and Development (OECD) and the Council of Europe.

Freedom of religion and expression, prohibition of propaganda for war and incitement to national, racial and religious hatred

130. With reference to that issue, members of the Committee requested the representative of the State party to comment on the experience to date in applying the new legislation relating to the status of conscientious objectors; for example, what alternatives were envisaged for the legislation after the conclusion of the current five-year trial period mentioned in paragraph 97 of the report. They also wished to know what possibilities existed for appeal against refusal of approval for distribution of video cassettes by the public authority mentioned in paragraph 105 of the report; why the prohibition against engaging in anti-religious propaganda was applicable only to atheists; and why the Finnish Government maintained its reservation concerning propaganda for war.

131. In his reply, the representative stated that it was too early to evaluate the results of the implementation of the new legislation on the status of conscientious objectors. At present, a circular was being distributed to various departments in order to obtain their opinion on the bill. The remedy in a case where approval was refused for the distribution of video cassettes consisted of an appeal to the Film Board and, in the second instance, to the Supreme Administrative Boards. The penalty for the crime of breaching the sanctity of religion applied to any such offender, and not merely to certain groups. The Government's objections to a ban on war propaganda were based on strongly held principles and were not expected to change in the near future. However, the draft proposals for reform of the Penal Code contained a reference to incitement to war.

Protection of the family

132. With regard to that issue, members of the Committee wished to know whether easy divorce did not have an adverse effect on children.

133. In his reply, the representative said that the reform of the Marriage Act and the divorce laws had been seen as a realistic development in Finnish society. The "guilt principle" had had a negative effect on relationships within families, and its abolition had been an improvement from the children's point of view.

Political rights

134. With regard to that issue, members of the Committee asked whether citizens of countries other than the Nordic countries were entitled to voting rights after two years' residence and whether those rights extended to membership in political associations.

135. In his reply, the representative said that, for the time being, only Finnish citizens had the right to vote and that membership in political parties was open to all foreigners in Finland.

Rights of persons belonging to minorities

136. With reference to that issue, members of the Committee wished to know what was the current status of consideration of the proposed Sami Language Act, mentioned in paragraph 139 of the report; what progress had been achieved in improving the status and conditions of the Finnish Romanies as a result of the passage of such laws as the Act Prohibiting Discrimination on the Basis of Racial or Ethnic Origin (1970) and the law aimed at improving the Romanies' housing conditions; why the Finnish legislation differed so much from the Swedish by keeping reindeer breeding open to all; whether there was any law governing the recognition of ethnic minority groups in Finland; what minorities there were other than Swedish, gypsies and Samis, and whether such minorities enjoyed any special treatment; and what measures, other than measures in the areas of education and language, had been taken to preserve the culture of minority groups.

137. In his reply, the representative said that the proposed Sami Language Act, which would guarantee the Samis the right to use their mother tongue in courts and in dealings with the authorities, had been submitted to Parliament

on 5 October 1990. As a practical measure, new translator posts would be established in the northernmost municipalities. The explanatory memorandum for the new bill made specific reference to articles 2, 15, 26 and 27 of the Covenant. The Government had set up an Advisory Board for Romany Affairs under the Ministry of Social Affairs and Health, which had produced reports with a view to improving the housing of the Romany population. The Romany language was not being taught in secondary schools but an appropriation had been set aside in the national budget for the Board of Education to cover grants for adult education in civic and workers' institutes.

138. In reply to other questions, the representative explained that the differences in legislation between Sweden and Finland with regard to reindeer breeding were due to differences in the economic and ecological problems of the regions concerned. There were general legislative criteria distinguishing between minority members and non-minority members, the main criteria being self-identification and language. Minority groups were basically Samis, gypsies, certain religious minorities and a Swedish-speaking part of the population. Numerous measures were taken to preserve the culture of minority groups.

Concluding observations

139. Members of the Committee expressed their appreciation of Finland's excellent and useful report and thanked the delegation of Finland for its cooperation and great competence in answering the Committee's questions, as well as for its spirit of openness. It was clear from the report and the discussions that Finland was consistently striving at improving human rights guarantees and observance and deserved to be congratulated on its human rights record. Members noted with particular satisfaction that special attention was being paid to the problem of direct compensation to individuals whose rights under the Covenant had been infringed and that Finland was pursuing an exemplary policy regarding development aid and human rights. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been fully allayed, particularly in respect of preventive detention practices relating to dangerous recidivists; the detention and treatment of aliens; freedom of religion and of expression, particularly in so far as conscientious objection to military service was concerned and the denial of passports under certain circumstances.

140. The representative of the State party thanked the members of the Committee for their comments and cooperation, which had given the delegation much to reflect upon.

141. In concluding the consideration of the third periodic report of Finland, the Chairman said that the Committee appreciated the skilful presentation of the report and the open and fruitful dialogue that had taken place. The Committee was confident that the delegation would report its views to the Government.

Spain

142. The Committee considered the third periodic report of Spain (CCPR/C/58/Add.1 and 3) at its 1018th to 1021st meetings, held on 29 and 30 October 1990 (see CCPR/C/SR.1018-1021).

143. The report was introduced by the representative of the State party, who recalled that the Spanish Constitution guaranteed the full exercise of human rights and noted that substantial progress had been made in that respect through reforms in the administration of justice. The courts, especially the Constitutional Court, had handed down numerous decisions based on the provisions of the Covenant.

Constitutional and legal framework within which the Covenant is implemented

144. With regard to that issue, members of the Committee asked whether a provision of the Covenant could be directly invoked before the courts; whether any court decisions or rulings had been directly based on provisions of the Covenant; whether the authorities of the Autonomous Communities, including the legislative authorities, had been made aware of the provisions of the Covenant; and whether such provisions had been reflected in their statutes. They asked also whether the civil and political rights enumerated in title I, section 1 of the Constitution were automatically applicable within the Autonomous Communities or had to be enacted separately.

145. In addition, members of the Committee wished to know whether, in case of a conflict between a law and the Covenant, the courts would apply the Covenant over and above the law, and in that case, whether the law in question would be repealed; whether it was possible for a law enacted subsequent to the Covenant but which ran counter to its provisions to be declared unconstitutional; whether there had been any proceedings before the ordinary courts which had been taken on appeal to the Constitutional Court by an individual; whether all of the rights enshrined in the Covenant were provided for in the Constitution and relevant legislation; and what was the position of the Covenant in the hierarchy of norms. They also wished to know why the grounds on which discrimination was prohibited under article 53 (2) of the Constitution differed from those mentioned in the Covenant; what were the reasons for establishing exceptions to the right of aliens to enjoy civil and political rights; whether the remedy of *amparo* might be used in the event of violation of rights guaranteed under the Covenant, and whether that remedy and the remedy of *habeas corpus* remained under a state of emergency or siege. Members of the Committee also wished to receive further information on the powers of the courts and parliaments of the Autonomous Communities; on how the Constitutional Court had resolved conflicts between those courts and the courts of the State; on the precise competence of the Constitutional Court with regard to individual cases and decisions rendered by a lower court; on the competence of the Parliamentary Committee; on the number of complaints concerning rights specifically covered by the Covenant dealt with by the People's Advocate; and on the agreements and sharing of competence between the People's Advocate and his opposite numbers in the various Autonomous Communities under Act No. 36/1985.

146. With regard to the backlog of cases, members of the Committee wished to know whether the efforts being made to overcome the backlog were producing results; what was the average length of time taken for civilian and criminal cases to come to court; whether the courts had experienced any difficulties in the accelerated training of judges and the establishment of courts during the period under review; how long proceedings took if judicial means had to be exhausted before an application for *amparo* could be made; whether there was a code of ethics for public officials; and whether only naturalized citizens could be deprived of their nationality.

147. In reply, the representative stated that the provisions of the Covenant had been incorporated into domestic law and that they could therefore be directly invoked before the courts. Abundant case law invoking international human rights instruments had been developed by both the ordinary courts and the Constitutional Court. The Covenant had been elevated to the rank of constitutional law, although it did not take precedence over the Constitution. The interpretation provision on article 10 (2) of the Constitution provided that if there was any discrepancy between a particular rule of law and the corresponding provision in the Covenant, the interpretation must be in conformity with the Covenant. If a law adopted after Spain's accession to the Covenant was found to infringe its provisions, the Constitutional Court might be asked to decide whether the norm was unconstitutional in itself, without reference to a particular case, or whether it was unlawful prior to its application in a particular case. With regard to the apparent discrepancy between article 14 of the Constitution and article 2 (1) of the Covenant, he explained that the grounds of colour and national origin could be considered as covered under the ground of race; the spirit of the law was that there was absolute prohibition of discrimination on any ground. The holding of public office was, however, reserved for Spanish nationals, although aliens were entitled to vote in municipal elections, in accordance with the principle of reciprocity. Under the Constitution, the rights enshrined in the Covenant were binding on all public authorities. The statutes of the Autonomous Communities recognized the fundamental rights enshrined in the Covenant and expressly established the specific duties incumbent on the public authorities of those Communities to ensure respect for the Covenant's provisions. Article 53 (1) of the Constitution provided that the Covenant should be directly applicable in the Autonomous Communities.

148. In reply to questions on the remedy of *amparo*, the representative said that *amparo* could be applied for in respect of a violation of fundamental rights and freedoms and that it continued to be available during states of emergency. The remedy of *amparo* could not be employed in cases of private property and inheritance rights, but it was directly applicable to the rights provided for in article 14 of the Constitution concerning equality before the law. *Amparo* was one of the remedies available to contest laws on the grounds of unconstitutionality. Laws could also be challenged on the grounds of unconstitutionality, as provided for in the Constitutional Court Organization Act. The Constitutional Court had the power to reverse decisions of lower courts. Parliamentary committees were purely investigative bodies which considered complaints and transmitted their findings to the appropriate authority. The State had exclusive jurisdiction in areas such as nationality, immigration, defence, international relations and the administration of justice, while the Autonomous Communities had complete or partial jurisdiction in certain other areas. In resolving conflicts between the laws of the State

and those of the Autonomous Communities, the Constitutional Court relied exclusively on the provisions of the Constitution. However, in recent years the discrepancies between state and autonomous community legislation had been gradually removed.

149. With regard to the administration of justice, the representative noted that between 1982 and 1987 the personnel budget had more than doubled and the amount spent on goods and services had almost quadrupled; between 1982 and 1990 the number of judges had risen from 2,036 to 3,032. Efforts were being made to speed up the process without sacrificing the judiciary's high standards. Experienced lawyers could now be appointed directly to the judiciary. The legal system had been completely remodelled and the backlog of cases was being gradually reduced.

State of emergency

150. With regard to that issue, members of the Committee asked whether there was any maximum time-limit for the detention of persons suspected of participating in terrorist offences. Noting that the suspension of certain individual rights was dealt with in the Spanish Constitution in connection with states of emergency, members wished to know whether paragraph 1 of article 55 of the Constitution was the only provision applicable to article 4 of the Covenant.

151. Concerning terrorism, members wished to know what were the respective powers of the Ministry of the Interior and the Peoples' Advocate in that respect; what difficulties were encountered with terrorism associated with some form of separatism; whether all persons arrested or detained had the opportunity to obtain the assistance of a lawyer of their own choice; whether decisions to suspend individual rights were adopted by the Cortes Generales or the Cortes of the Autonomous Communities; whether that type of legislation was subject to a time-limit and review by the legislative authorities; whether the lists of derogations applicable to suspected terrorists was exhaustive; what was the maximum length of time that a suspected terrorist could be held incommunicado and how the incommunicado procedure worked in practice; and why it had been considered necessary to make provision for extension of the custody period.

152. In reply, the representative said that in the Organization Act 4/1988 the period of detention of persons suspected of terrorists acts was 72 hours, which could be extended by a further 48 hours if a judge so decided. The same chapter of the Constitution allowed for a general suspension of rights in a state of alert, exception or siege and the suspension of individual rights in other specified cases. Only the Cortes Generales could adopt an organization act proclaiming a state of alert, exception or siege, and the duration of such state was always limited. Unjustified or abusive use of the powers recognized in such an organization act carried criminal penalties. No provision authorized the suspension of any of the rights recognized in articles 6-8, 11, 15 or 16 of the Constitution. The rights which could be suspended in order to facilitate investigations in the fight against terrorism were those set out in article 17 (2) and articles 18 (2) and (3) of the Constitution. Detention of suspected terrorists could take place only on the basis of a substantiated order issued by the judiciary. Incommunicado detention could be ordered only by a judge; the detainee had at all times the assistance of a lawyer, who in

terrorist cases was appointed by the court. Suspected terrorists were examined by a doctor appointed by the judiciary.

Non-discrimination and equality of the sexes

153. In connection with that issue, members of the Committee wished to receive information concerning the activities and accomplishments to date as well as the future plans of the Institute for Women. They also wished to know whether the Institute could receive complaints of discrimination on grounds of sex and, if so, what action it could take; whether there was any case law with regard to violations of the principle of equality between the sexes; whether a woman could accede to the throne; what factors had impeded progress in achieving equality between the sexes; what was the proportion of women in the education system, particularly at the university level; what the authorities had done to put an end to the practice of traffic in women along the border with Portugal; and lastly why, according to article 14 of the Constitution, only Spaniards appeared to enjoy equality before the law.

154. In reply, the representative noted that a number of major changes had been made recently in the Civil Code and the Labour Relations Code to promote non-discrimination, that maternity and paternity leave had been liberalized and that steps had been taken to enforce the payment of alimony. Measures had also been taken in 1989/90 to make it easier for women to join the armed forces, the state security force, and the Guardia Civil. Sexist stereotypes had been eliminated from school textbooks and particular attention was being paid to the portrayal of women in advertising. The Institute for Women had achieved considerable progress in the promotion of equality; for example, more and more women were passing the civil service entrance examinations. The representative said he had no knowledge of any traffic in women along the border with Portugal, but recently a crime network selling people into prostitution had been unmasked.

155. Replying to other questions, the representative explained that the reference in article 14 of the Constitution to "Spaniards" should be read in conjunction with article 13 (1), which stated that aliens in Spain enjoyed public freedoms, guaranteed in treaties and the law. The employment situation of women had improved spectacularly and the number of women in the education system was certainly over 50 per cent. Although it was not impossible for a woman to accede to the throne of Spain, there was an explicit bias in favour of men; the present King of Spain had a male heir, so the throne could not pass to a woman.

Right to life

156. With reference to that issue, members of the Committee wished to know whether there were any plans by Spain to ratify the Second Optional Protocol, aiming at the abolition of the death penalty; whether the authorities intended to amend the Code of Military Justice to limit the number of capital offences; whether the Code of Military Justice could be applied to civilians in certain situations; whether the death penalty was applicable also to offences under the Code of Military Justice in cases where war had not been officially declared or hostilities had not begun, or in a civil war; whether appeal could be made to a civil court against a death sentence pronounced by a military court and, if so, which civil court would hear the appeal; and, with regard to

disappeared persons, whether there were procedures in Spain for investigations into deaths in custody or detention that met the criteria adopted by the United Nations General Assembly.

157. In reply, the representative said that Spain was working to abolish the death penalty and that the instrument of ratification to the Second Optional Protocol to the Covenant had been submitted to the *Cortes*. However, Spain would enter a reservation to the effect that the death penalty could be applied in extremely serious cases in wartime. The death penalty was not mandatory for the offences listed in the Code of Military Justice and could be imposed only during a genuine and formally declared war with a foreign Power. The problem of disappearances for political reasons was unknown in Spain. Since the establishment of democracy in Spain only a general law detainee had disappeared and those responsible had been brought to court.

Treatment of prisoners and other detainees

158. Concerning that issue, members of the Committee wished to know whether there had been any complaints during the period under review of torture or cruel, inhuman or degrading treatment of prisoners or detainees and, if so, whether there had been any convictions on such charges. They also wished to have information on detention in places other than prisons or for reasons other than criminal offences (for example, in police princincts or psychiatric institutions), as well as on the matters covered in the 1990 report by the People's Advocate.

159. In addition, members of the Committee wished to know whether the Spanish Government intended to speed up the legal process in criminal cases; whether there was a link between incommunicado detention and the risk of ill-treatment of detainees accused of terrorist acts; how the "prison code", which allowed inmates to beat up child sex offenders, was to be understood; what was the practice relating to the employment of convicts; what regulations governed the frequency of interrogations and whether a doctor was involved; under what circumstances an oral or written confession would be considered to be voluntary; whether the courts could convict a defendant on the strength of a confession; whether it was incumbent on the prosecution to prove that the evidence had not been obtained by irregular means; what measures were taken to educate the police about human rights; whether people suffering from AIDS could be hospitalized on the grounds that they were a danger to public health; why the right not to be subjected to medical or scientific experimentation without one's free consent was not guaranteed; whether the Spanish authorities intended to draw up regulations governing *in vitro* fertilization and human embryo research; and lastly, why the talks with the International Committee of the Red Cross about conditions of detention had been broken off.

160. In reply, the representative said that the only complaint concerning prisoners or other detainees had been made by members of the terrorist group GRAPO, who had been force-fed while on hunger strike. The Government had been able to prove before the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment that their action had in no way violated any of the fundamental rights of the hunger strikers. In some cases, members of the police force and the *Guardia Civil* had been convicted on charges of ill-treatment but there had been no convictions relating to cases of torture. Conditions of detention were governed by the provisions of the

Constitution and the Penal Code; the maximum length of custody at a police station was 72 hours.

161. Replying to other questions, the representative emphasized that Spain had made considerable effort to modernize the prison regime. The Government had approved an Organization Act on 21 July 1989 which prescribed penalties specifically for torture. Cases of ill-treatment did occur but it was not a systematic practice, and such cases were dealt with as quickly as possible. Confessions did not constitute proof capable of securing the conviction of the accused. Evidence obtained through violations of the accused's rights was entirely inadmissible and was considered not to exist for the purposes of the case. A judge from the Office of the Government Attorney visited prisons frequently, as did a visiting magistrate who received any complaints about prison conditions. There was no forced labour in Spanish prisons. Detainees in incommunicado detention had the right to be examined by a doctor of their choice. A mentally ill person could not be detained against his will except by order of a court and on the recommendation of two physicians appointed by a judge. The same rules applied to a mentally ill person who was serving a prison sentence. Human rights training courses were provided in police academies, and refresher courses were offered under the auspices of the Council of Europe.

Liberty and security of the person

162. With regard to that issue, members of the Committee wished to know how the new arrangements set out in Organization Act No. 4/1988 were being implemented; whether the maximum period of pre-trial detention for serious offences of two years could be considered as a reasonable period; whether serious offences included acts of terrorism; why the length of detention depended on the seriousness of the offence; whether detainees, including suspected terrorists, were entitled to request the presence of a lawyer of their own choice after arrest; whether the rules for persons suspected of terrorist offences were the same as those for persons suspected of other offences; and how the remedy of *habeas corpus* was applied in cases of terrorists.

163. In reply, the representative said that Organization Act No. 4/1988 had been amended, subsequent to a Constitutional Court ruling, to provide for a maximum period of five days of detention without charge of suspected terrorists. Since the adoption of that Act, there had been no allegations of torture or ill-treatment of detainees. Suspected terrorists were frequently brought before a judge immediately after arrest, and in such cases the accused was assisted by a lawyer appointed *ex officio*, in order to avoid certain types of communication during the initial period of detention. The lawyer so appointed advised the accused from the time of arrest up to a period of up to five days, at which time the detainee was entitled to choose his own counsel and to exercise all of his rights. There were no special provisions regarding pre-trial detention of terrorist suspects. In ordinary criminal proceedings an arrested person was entitled to a lawyer of his own choice. Depending on the nature of the offence and the complexity of the investigation, the accused was generally freed on bail pending the outcome of a protracted investigation. The remedy of *habeas corpus* was frequently used, particularly in cases involving acts of terrorism.

Right to a fair trial

164. With reference to that issue, members of the Committee wished to know what further progress had been achieved in implementing the plan provided for in the Judicial Districts and Establishment Act; the extent to which criminal procedures had been simplified during the reporting period; how respect for the principle of confidentiality of communication between a lawyer and his client was ensured; what were the rules governing *in absentia* trials and for the review of trials; and whether politicians served as members of the General Council of the Judiciary. In addition, clarification was requested of the statement that the presumption of innocence could be overturned by a "minimum amount of evidence".

165. In reply, the representative said that the Judicial Districts and Establishment Act envisaged one magistrate per 10,000 citizens; this plan had been 85 per cent fulfilled and would be completed in 1992. Numerous courts had been set up in the communities surrounding Spain's largest cities and each Autonomous Community had been provided with a Higher Court of Justice. The salaries of judges and magistrates had been set above the average remuneration of the most senior civil servants. Judges were independent and their transfer was a matter of their own free will. The self-governing General Council of the Judiciary used its disciplinary powers mainly against judges who had not fulfilled their duties. Courts and tribunals were frequently visited by members of the judicial inspection service.

166. The requirement for the appointment, *ex officio*, of a defence counsel in cases involving terrorist offences related to the need to facilitate a proper and impartial examination of a case. Examining cases and giving decisions on them were two separate functions performed by different judges in order to ensure the maximum impartiality of the judiciary. There had been a shorter procedure for less serious offences, but that had been abandoned because the Constitutional Court had required that there should be absolute observance of jurisdictional guarantees. The principle of the presumption of innocence was always completely respected, and in one case even suspected terrorists had been released.

167. Trials *in absentia* were very infrequent and were largely limited to cases involving traffic accidents. The remedy of review was a special procedure involving a court consisting of magistrates from various courts acting as a supreme court in cases where fresh facts had come to light since the passing of the original sentence. The Spanish Constitutional Court was very strict in its observance of the guarantees to ensure that "defencelessness" did not occur. The General Council of the Judiciary was elected from among magistrates, lawyers and jurists of recognized competence and with over 15 years' professional experience. The fact that lawyers sometimes occupied judicial posts did not mean that they were political appointees.

Freedom of movement and expulsion of aliens

168. In connection with that issue, members of the Committee asked whether an expulsion order was automatically suspended when an appeal through *amparo* or other procedures for the suspension of administrative decisions was lodged with a judge by the concerned individual; whether the remedies under articles 34 and 35 of Organization Act No. 7/1985 addressed both the form and

the substance of decisions; what further restrictions, if any, had been placed on aliens since 1985; and what specific legal provisions governed the right of Spaniards freely to enter and leave Spain.

169. In his reply, the representative said that there was no automatic suspension of an expulsion order but, in practice, there was a high percentage of suspensions of expulsion orders. Actions taken under the Aliens Act were subject to review by the courts and must neither be unreasonable nor disproportionate. The Act itself was currently under review in the Constitutional Court. Spaniards did not require passports in order to enter or leave the country, and no one could be denied a passport except for criminal reasons. Travel restrictions on political grounds had been abolished.

Right to privacy

170. With regard to that issue, members of the Committee wished to know whether the possibility of drafting legislation relating to data processing was being actively pursued by the Government; whether it was intended to maintain legislation permitting telephone tapping in cases of suspected terrorism; what was the difference in application of the law on house searches as between the public at large and persons suspected of engaging in terrorist activities; and what was the legal basis for considering the act of insulting the flag as an offence.

171. In his reply, the representative noted that under the Constitution the use of data processing had to be limited so as to guarantee the honour and personal and family privacy of citizens and the full exercise of their rights. Spain had ratified the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Several legal measures had been taken for the protection of privacy, and a specific bill on data processing was also currently under consideration. A decision by the Minister of the Interior to authorize telephone tapping had to be communicated to a court, together with the grounds on which it was taken, and the court had to confirm or reject that authorization within 72 hours. The Criminal Prosecution Act provided that the police could, on their own authority, arrest a person found *in flagrante delicto* who had taken refuge in his home, which could be entered for that purpose. Persons suspected of terrorist activities could be arrested at any place of refuge. Homes were sometimes searched, in cases involving major drug offences, for example, in the presence of a judge, who directed the operation.

Freedom of thought and religion

172. With reference to that issue, members of the Committee wished to know what procedure existed for determining whether conscientious objection on grounds of belief was genuine; whether the duration of alternative service was the same as that of military service; whether churches, faiths and religious communities were ever refused registration, and if so, for what reasons; why the penalty for absence without due cause for over three consecutive days from the place where alternative social service was to be performed could be as much as six years' imprisonment; and why a person who had begun military service was compelled to continue his service if his conscience no longer permitted him to do so.

173. In reply, the representative stated that the principle of conscientious objection was accepted and that the length of alternative service was twice the length of military service. The matter was currently under judicial review. The registration of churches, faiths and religious communities was an automatic procedure and all of them enjoyed equal protection of the law. However, protection was also given against pseudo-religious organizations that caused harm to children.

Freedom of expression; prohibition of propaganda for war and incitement to national, racial and religious hatred

174. In regard to that issue, members of the Committee wished to know how the right to seek information envisaged in article 19 (2) of the Covenant was guaranteed; whether there was any legislation to regulate professional secrecy as provided for under article 20 (1) (d) of the Constitution; whether any legislative measures were being considered to give effect to article 20 of the Covenant; whether sentences passed in relation to the exercise of freedom of expression were perceived as a restriction on such freedom; whether the standards of libel applied were more flexible when the reputation of people in public life was involved; whether legislation existed allowing private individuals to obtain information from the authorities; what procedures governed the granting of television concessions to the private sector; and whether measures had been taken to ensure the political neutrality of the channels.

175. Replying to questions raised concerning article 20 of the Spanish Constitution, the representative said that the right to freedom of the press could be invoked directly before the courts. Government and Parliament were of the opinion that no legislation was the best legislation where information was concerned; this explains why to date there was no legislation on the press or the media. Freedom of the press was limited only by the provisions of the Penal Code and a law on the protection of honour. The Constitutional Court had ruled that freedom of expression and the right to information overrode the right to honour. There was general agreement among politicians that the law should be amended to make serious slanders on political personalities no longer liable to prison sentences but only to fines. The Spanish Administration was required to make available to the public any information in its possession, limited only by the Official Secrets Act. No press organ was in state ownership and the number of concessions had been limited to prevent groups or individuals gaining control of those media. Autonomous regions each had the right to set up their own television channel. Impartiality was guaranteed by the channels' boards of directors, which were made up of representatives of the various political parties. Violation of the channels' political neutrality during election campaigns constituted an electoral offence. Administrative penalties were the responsibility of the Minister of Transport, Tourism, and Communications and could be appealed before the courts.

Freedom of assembly and association

176. With regard to that issue, members of the Committee wished to receive more information concerning the sentencing of *Guardia Civil* members to comparatively heavy terms of imprisonment for having tried to form a trade union.

177. In reply, the representative said that the question of converting the Guardia Civil from a military to a civilian institution was a very controversial one. The sentences referred to by members of the Committee were never served.

Protection of children

178. With reference to that issue, members of the Committee wished to be provided with information regarding the law and practice relating to the employment of minors.

179. In reply, the representative stated that the age of legal majority had been set at 18 but was 16 for employment purposes. Some forms of work were forbidden for persons below the age of 18. Administrative legislation had been adopted forbidding the employment of minors in occupations liable to interfere with their general education.

Rights of persons belonging to minorities

180. In connection with that issue, members of the Committee asked the representative of the State party to comment on the accomplishments to date of the relevant Autonomous Communities in their efforts to integrate the gypsy minority and about any continuing difficulties being faced in that regard. They also wished to know whether changes could be envisaged to the existing structure of the Spanish State in response to the claims of the Basque minority; whether the various languages other than Spanish could also be used in the courts; and what measures had been taken to preserve gypsy culture and to encourage the use of their language.

181. In reply, the representative said that there had been a long history of harmonious coexistence among the various ethnic groups in Spain. The Ministry for Social Affairs had had housing built for the gypsy minority and had been instrumental in setting up an interministerial group with the task of encouraging the adoption of measures to improve their integration and development. The Autonomous Communities had also adopted social and other legislation which made special provisions for gypsies. Article 2 of the Constitution provided that "The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible country of all Spaniards". If a party standing for self-determination was ever voted into power by a majority of Basque electors, that would be the time to consider the consequences of such a vote. Spanish and the local language were the official languages of the Autonomous Communities and the official gazette of each community was published in both languages. The local language was used in the courts if it was understood by all those present. There was no gypsy language as such in Spain but only some gypsy words in Spanish slang. The Government was making all possible efforts to respect gypsy customs and culture.

Concluding observations

182. Members of the Committee expressed satisfaction with Spain's informative report and thanked the State party's delegation for engaging in a constructive and fruitful dialogue with the Committee, which had provided an opportunity to observe at first hand the progress of democratic Spain. The steady improvement in the human rights situation in Spain, particularly through the

strengthening of the legal system and the judiciary, deserved respect and it could confidently be said that Spain was continuing to make progress on all fronts.

183. Nevertheless, members noted that there were a number of problems that still gave rise to concern, some of which were the same as had been expressed during the consideration of the second periodic report. Among such concerns were the number of offences carrying the death penalty; the suspension of the rights of terrorist suspects under article 55 (2) of the Constitution and the fact that circumstances had given rise to what amounted to permanent emergency legislation; the need to take action aimed at preventing cases of torture and ill-treatment, such as police and security force training, as recommended in the report of the People's Advocate; the military nature of the Guardia Civil; the excessive length of the pre-trial detention period and its linkage to the length of the maximum allowable sentence; and conscientious objection. Members also expressed the hope that future reports would include more information on factors and difficulties encountered in implementing the Covenant.

184. The representative of the State party thanked the members of the Committee for their interest and cooperation and assured them that the Committee's concerns and observations would be duly conveyed to his Government.

185. Concluding the consideration of the third periodic report of Spain, the Chairman thanked the delegation for the quality of the report and the dialogue it had initiated, which had revealed many positive factors, particularly the Government's commitment to strengthening the machinery of justice.

Ukrainian Soviet Socialist Republic

186. The Committee considered the third periodic report of the Ukrainian Soviet Socialist Republic (CCPR/C/58/Add.8) at its 1028th, 1029th and 1031st meetings, on 5 and 6 November 1990 (see CCPR/C/SR.1028, SR.1029 and SR.1031).

187. The report was introduced by the representative of the State party, who noted that many changes bearing on human rights had occurred since the submission of the report. As a result of the first multi-candidate elections held on March 1990, representatives of many different political groups now sat in the Ukrainian Supreme Soviet. A new law had abolished the monopoly previously exercised by the Ukrainian Communist Party over all areas of public life, and it was no longer necessary to be a member of a particular political party in order to work for bodies concerned with internal affairs and national security. The adoption of a Declaration of State Sovereignty of the Ukrainian Soviet Socialist Republic had led to considerable debate about the future role of the Ukrainian SSR within the USSR, as well as to a number of difficult legal problems that had not yet been overcome.

188. In addition, the Supreme Soviet had appointed a commission to draw up a new Constitution and had under consideration a number of bills relating, *inter alia*, to economic independence, consumer rights, citizenship, public organizations, freedom of movement, and the right of citizens to complain directly to the courts against unlawful acts committed by officials. On 27 October 1990, a Constitutional Court had been established which could,

inter alia, consider complaints from individuals about violations of their constitutional rights but, in that regard, the psychological barrier created by the old doctrine of state paternalism, which had encouraged people to believe that human rights came second to the interest of the State, would need to be overcome. Committees of People's Deputies had been established to ensure that new legislative proposals were consistent with human rights and to safeguard the rights of people who had suffered in the Chernobyl nuclear disaster. Efforts were also being made to publicize human rights issues, and training courses were being held for persons working in areas where human rights considerations were particularly relevant.

Constitutional and legal framework within which the Covenant is implemented

189. With regard to that issue, members of the Committee wished to receive detailed information on the legal effect of the Ukrainian Declaration of State Sovereignty of 16 July 1990, particularly in terms of its relationship to the existing Constitution of the Ukrainian SSR and the Constitution of the USSR. They also wished to know the extent to which the provisions of the Covenant had been enacted into domestic law; what measures were contemplated to ensure consistency between the Covenant and new constitutional or other legal instruments; and how the USSR Act of 30 June 1987, as supplemented by section 31-A of the Code of Civil Procedure of the Ukrainian SSR, had actually been implemented, what the status of the Covenant would be under the new Constitution and whether it would give the Covenant priority over national law.

190. In addition, members wished to know whether section X of the Ukrainian Declaration of State Sovereignty implied any changes in the status of international law relative to domestic legislation; whether individuals could invoke the Covenant in accordance with the new Code of Civil Procedure; whether citizens complaining of arbitrary actions by officials could appeal directly to a court without first exhausting all administrative remedies; whether it was planned to set up special bodies to deal with human rights issues in the Republic; what was the status of non-governmental organizations; what was the relationship between the Commission on Human Rights and the Constitutional Court, on the one hand, and the Supreme Court on the other; what measures had been taken to disseminate information on the rights recognized in the Covenant; whether any special factors or difficulties had affected the implementation of the Covenant; whether the public had been informed about the submission of the Republic's third periodic report; and whether the Commission on Human Rights had been given an opportunity to make any contribution to the report. Clarification was also requested as to the precise meaning of the terms "socialist democracy", "socialist law and order" and "democratic centralism" used in the report, the role of the Communist Party within the Republic, and on how the right of the Ukrainian SSR to secede from the USSR could be exercised at the present stage.

191. In connection with the recognition by the Ukrainian SSR of the jurisdiction of the International Court of Justice with regard to six international human rights treaties, members wished to know whether that recognition would be broadened to encompass other international treaties, such as the Covenant; what the implications were for the State-to-State dispute settlement procedures already in existence under some of those instruments; whether that change in approach had any practical implications in terms of the Republic's accession to the Optional Protocol; and whether accession to the Optional Protocol was in any way linked to accession by the USSR.

192. In his reply, the representative of the State party noted that there were a number of discrepancies between the respective legislation and Constitutions of the Republics and those of the USSR, which were the subject of negotiations aimed at finding mutually acceptable solutions. The Supreme Soviet of the USSR had recently decided that the powers entrusted by the Republics to the USSR had to be more clearly defined. The Declaration on State Sovereignty, which represented the Republic's intention to conduct its own state, economic and political life on the basis of specific principles, was to be incorporated into the new Constitution. The law on the procedures for secession from the USSR had been adopted on 3 April 1990, and, on its entry into force, an order of the USSR Supreme Soviet had been promulgated providing for the holding of referendums in the Republics. If the question of resorting to article 69 of the Constitution ever actually arose, there would not only be a call for a referendum but also a great deal of publicity, since the issue affected the fate of all the people.

193. The new Constitution would contain a norm giving priority to the Republic's international treaty obligations, including those stemming from the Covenant. Treaties would not be directly incorporated into domestic legislation, but it would be possible to refer to them in the courts. The primacy of international law over national law was already recognized. The Civil Code, for example, provided that if an international treaty established rules that differed from those in Soviet civil legislation, the rules of the treaty would apply. The decision by the authorities of the Ukrainian SSR in April 1989 to remove reservations regarding the recognition of the jurisdiction of the International Court of Justice represented a first step towards improving the implementation of its commitments regarding international monitoring.

194. Under section 31-A of the Code of Civil Procedure of the Ukrainian SSR, citizens could complain not only against actions of individual officials but also against those of collegiate bodies. The Supreme Soviet had recently taken direct responsibility for monitoring the protection of citizens' rights through the consideration of complaints relating to the activities of the various state organs. The Supreme Court of the Republic was responsible for hearing individual cases of violations of citizens' rights, while the Constitutional Court was empowered to rule on the constitutionality of the laws themselves. Accession to the Optional Protocol would require the agreement of all government and legislative bodies which, it was hoped, would be forthcoming in the near future. The result of the Committee's consideration would be reported to the Human Rights Commission and to the public, thus encouraging further attention to human rights issues. Within the Republic's multi-party system, the Communist Party expressed its views in Parliament on a pluralistic basis. The concepts of socialist democracy and socialist centralism were characteristic of the class approach that had long been followed in the country. In the new Constitution, the concepts of legality and democracy would be applied without qualifying them with the term "socialist".

Self-determination

195. With reference to that issue, members of the Committee wished to know whether the validity of any enactments of the USSR Council of Ministers or of USSR Ministries had been actually suspended by the Supreme Soviet of the

Ukrainian SSR; what the impact of the Declaration of State Sovereignty would be in that regard; and whether the USSR Constitution would continue to have precedence over the Ukrainian Constitution and over domestic law.

196. In his reply, the representative of the State party said that the adoption of the Declaration was one of the clearest indications of the Ukrainian nation's strong desire that its right to self-determination should be respected. It had been possible, even before the adoption of the Declaration, for the Supreme Soviet of the Ukrainian SSR to repeal legislation adopted by the USSR Council of Ministers that was not in conformity with Ukrainian legislation. However, where a Union agreement had been concluded in which the Republic had assigned part of its competence to Union bodies, the competence and jurisdiction of the Union bodies would have precedence.

Non-discrimination and equality of the sexes

197. With regard to that issue, members of the Committee wished to know the extent to which the principle of equality of rights and equality before the law contained in article 32 of the Constitution of the Ukrainian SSR was applicable to aliens. Observing that political opinion was not one of the grounds for discrimination referred to in article 32 of the Constitution, they also wondered whether, in the light of the current situation and the amendment of the provisions governing the role of the Communist Party, attention had been given to broadening the provisions relating to non-discrimination.

198. In his reply, the representative stated that the Supreme Soviet had recently voted in favour of reviewing the legislation in order to improve the status of women. While there was no discrimination based on sex, in practice there were still substantial inequalities which were extremely difficult to overcome. Aliens had the same rights under the Constitution as citizens of the Republic, with the sole exception of the right to political participation. Under the new Constitution, membership of any party would no longer be grounds for discrimination.

Right to life

199. In connection with that issue, members of the Committee wished to know how often and for what crimes the death penalty had been imposed and carried out since the consideration of the second periodic report of the Ukrainian SSR; whether any consideration had been given to the abolition of the death penalty; whether there had been any prosecutions, and if so with what results, under articles 108 (2) and 123 (2) of the Criminal Code; and what measures had been taken to protect the right to life against the risk of nuclear disaster and environmental pollution, particularly subsequent to the accident at Chernobyl. Although welcoming the fact that the number of crimes carrying the death penalty had fallen from 17 to 6, members wished to receive further information about the draft new Principles of Criminal Legislation. They also wished to know why the provision that the death penalty would not be applied either to women or to men over the age of 60 had not yet been applied and whether the right to appeal against a death sentence was provided for in legislation. Concern was also expressed over the fact that statistical data relating to the application of the death penalty was considered confidential.

200. In his reply, the representative of the State party pointed out that the number of death sentences imposed and carried out had gone down by one third. Four bills relating to the publication of sentencing statistics had been drafted since 1986 but none had yet become law and the problem would be fully dealt with only when a political decision had been taken in Parliament. Under the draft new Criminal Code, the death penalty would be retained only for aggravated homicide, crimes against the State, spying, terrorism and acts of violence against minors. Although the threat of the death penalty had not proved to be a deterrent to crime, it was likely that, in a referendum, 80 per cent of the population would be in favour of maintaining it. Article 123 (1) had been applied in 16 cases, mainly for banditry and serious crimes such as hostage-taking.

201. Death sentences were reviewed by the Court of Appeal at the request of the accused person and could, in exceptional circumstances, be dealt with by the Supreme Soviet. Moreover, it was possible in all cases to apply for a pardon. Under the new Principles of Criminal Legislation, not only pregnant women, but all women, would no longer be subject to execution, and the same would apply to men over the age of 60. These provisions had not yet been applied since they had not yet been approved by Parliament.

202. With regard to questions raised relating to the protection of the right to life against the risk of nuclear disaster and environmental pollution, the representative explained that after the accident at Chernobyl, a "high-risk" area within a radius of 300 kilometres had been designated and the inhabitants within that area had been moved into new housing that had been built for them. Subsequently, the high-risk area had been extended and a decree concerning liability in cases of non-compliance with instructions relating to environmental protection had been adopted. Other texts relating to the protection of citizens who had suffered losses in the disaster were currently under consideration. A moratorium on the construction of new nuclear plants and power stations had also been imposed.

Liberty and security of the person and treatment of prisoners and other detainees

203. With reference to that issue, members of the Committee wished to know what were the conditions and the maximum duration of solitary confinement; what were the main differences in the regimes of prisons and corrective labour institutions or educational labour colonies; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with in all such places of detention; whether there was any mechanism to prevent abuse of the judicial powers of the procurator and what recourse was available to persons who had been victims of such abuses; what was the maximum legal period of detention without trial; and whether there was any provision for a regular review by a court of such detention.

204. Members also wished to know whether the courts of first instance were required to invalidate any sentence based on a forced confession; whether persons responsible for ill-treating prisoners were liable to criminal prosecution or disciplinary sanctions; whether measures had been taken to inform persons under arrest that they had the right to communicate with counsel; whether the legislation of the Ukrainian SSR contained a specific provision comparable to article 9, paragraph 3, of the Covenant; whether the

provision according to which the procurator had to decide on the lawfulness of detention was compatible with article 9, paragraph 4, of the Covenant; whether damage caused to a citizen as a result of unlawful arrest or detention entailed automatic reparation by the State; whether it was still possible for a person to be compelled to undergo psychiatric treatment without any authority being informed; and whether the system of forced and compulsory labour in the Ukrainian SSR was compatible with article 8 of the Covenant.

205. In his reply, the representative of the State party pointed out that, under the Ukrainian Criminal Code, prisoners could be placed in solitary confinement for up to a year, depending on the type of establishment where they were serving their sentences. Decisions on such matters were strictly regulated by law and were taken by the prison administration in agreement with the procurator. In general, offenders were subjected to different prison regimes depending on their personality and the gravity of the offence they had committed. The Standard Minimum Rules for the Treatment of Prisoners were generally complied with, but they were not observed everywhere because many persons working in penal institutions did not know about them. The fact that procurators had the power to order pre-trial detention did not necessarily involve violations of the Covenant. The Supreme Soviet had decided in 1989 to set the maximum period of pre-trial detention ordered by a procurator at 18 months. Abuses committed by an organ of inquiry were punishable and the responsibility of the State or of the person involved was engaged in that case.

206. Responding to other questions, the representative said that the legislation of the Ukrainian SSR did not contain any provision similar to that of article 9, paragraph 3, of the Covenant. Alternative forms of detention set out in the new article 168 of the Criminal Code included fines and extra work at the convicted person's usual place of work. Compulsory labour was imposed as a replacement for a custodial sentence and was, therefore, in no way inconsistent with the Covenant. Confessions obtained by physical or psychological coercion could not be accepted by the court of first instance but, in practice, some persons had been convicted on the basis of such confessions. The Procurator's Office and the Ministry of the Interior had, however, instituted proceedings against the officials who had exerted pressure to obtain confessions.

207. Referring to the possibility of the assistance of counsel after arrest, the representative said that there were a number of problems in that area, notably owing to the shortage of lawyers. Consideration was being given to methods for providing legal assistance and the new Code of Criminal Procedure would contain provisions in that regard. In 1989, the authorities had adopted provisions relating explicitly to psychiatric help, setting out guarantees for those confined and stressing that individuals who were not mentally ill should not be confined in psychiatric hospitals.

Right to a fair trial

208. With regard to that issue, members of the Committee wished to know what qualifications were necessary for appointment as a judge and what were the grounds for dismissing a judge; what the procedures were for recalling or dismissing a judge before the expiry of his term; what guarantees there were for ensuring that the terms and conditions of service and other emoluments and privileges of judges were not altered to their detriment during their terms of

service; whether there were any changes envisaged in the organization of advocates and lawyers; whether membership of a political party was a necessary condition for being elected or appointed as a judge; under what circumstances a trial could be held in secret; whether it was envisaged, pursuant to article 3 of the Declaration of State Sovereignty, to separate the judicial from the executive powers of the Procurator's Office; and whether any organs other than the courts were authorized to impose administrative detention. In addition, it was inquired whether the Procurator's Office still exercised direct control over the way the courts applied the law and, if so, whether the judiciary could then be considered as being independent. Observing that the executive power retained the right to rule on the constitutionality of a given law, members wished to know what the precise role of the Constitutional Court was and whether it could challenge decisions by the Supreme Soviet.

209. In his reply, the representative of the State party underscored that it had been proposed, under the current judicial reform, to appoint judges on the recommendation of a qualified panel of judges for a period of 10 years. Judges could not be dismissed unless they had committed a serious offence, such dismissal being decided by the Supreme Soviet. Judges' emoluments were still quite low. Candidates for appointment as judges had to have very thorough legal training, be at least 25 years of age, and have practised as a lawyer. Bar associations existed thus far only at the regional level, for specific districts, but there were plans to set up a bar council and other professional organizations which would defend the interests of all officials and court officers. Although a trial could be held in secret if a state secret had to be protected or if it involved details of the accused's private life or information involving minors, the verdict was always handed down in public.

210. Replying to other questions, the representative said that the reform of the judiciary now in process was intended to strengthen its independence to make it a genuine instrument for the defence of the law and of citizens' interests. The Supreme Soviet had also decided to depoliticize the judiciary. The Procurator's Office was not an organ of executive power and the Supreme Soviet could override an appeal petition or a protest from the Procurator's Office. The courts could impose administrative detention only when questions relating to administrative offences were brought before them directly. The Supreme Court did not have the right to rule on the constitutionality of given legislation. The most recent constitutional amendments provided for the establishment of a constitutional court with responsibility for the application of the law and for guaranteeing the constitutionality of the texts adopted.

Freedom of movement and expulsion of aliens

211. With reference to that issue, members of the Committee wished to know whether any consideration was given, in the context of the current reform movement in the field of civil and political rights, to the situation of the Crimean Tartars who had not yet been able to return to their earlier homes in the Ukrainian SSR; what the prospects were of early enactment by the Supreme Soviet of the USSR of the new draft law on entry into and departure from the USSR; whether the decree of the Presidium of the Supreme Soviet of the USSR on "Measures for preventing infection with the AIDS virus", adopted on 25 August 1987, had been applied in practice; and under what circumstances aliens were required to undergo medical examinations.

212. It was also inquired whether the Ukrainian SSR intended to adopt a law on the right to leave the country before the new USSR act had entered into force; what the required procedure was, in practice, for a national of the Ukrainian SSR who wished to leave the country; whether the documents issued to a Soviet citizen wishing to leave the country were valid for one destination only and whether they permitted his return to the USSR and to the Ukrainian SSR; whether the new legislation on the matter would also be applicable to persons who had previously submitted applications and had been turned down; whether a person infected with the AIDS virus would be authorized to enter the country; and under which circumstances aliens could be expelled from the USSR. Members expressed special concern about the fact that the draft law on the right of entry into and departure from the USSR retained the principle that access to state or public sector information could be grounds for refusing a passport and noted, in that same regard, that the definition of "state security" did not seem to coincide with the meaning of the term "national security" used in article 12 of the Covenant.

213. In his reply, the representative of the State party agreed that historic injustice had been done to the Crimean Tartars who had been moved against their will from their ancestral lands. They now had to be returned to their place of origin, but such a step gave rise to very difficult problems relating to housing and employment. The Ukrainian authorities, together with the Government of the USSR, were nevertheless considering the problem with a view to organizing a mass repatriation of the Crimean Tartars.

214. The new draft law on entry and departure from the USSR was scheduled to be adopted at the current session of the Supreme Soviet of the USSR and would bring the provisions regarding the possibilities of leaving the country and returning to it into line with the Covenant. The new provisions would not have a retroactive effect but the files of persons who had been refused on one or more occasions would be treated on an equal basis with other files. At present, the exercise of the right to leave the country was impeded by currency requirements as well as the obligation to have a residence permit. When the State no longer had a responsibility to provide housing for all, many difficulties would be eliminated and the obligatory residence permit could be abolished. The abrogation of a number of regulations, which had hitherto prevented people from moving to major cities such as Moscow, Leningrad or Kiev unless they were in possession of a special permit, was under consideration by the authorities. Aliens permanently resident in the USSR could be required to undergo a medical examination at the request of a health service. If they refused, they were invited to leave the country. However, the authorities tried to avoid recourse to repressive methods in combating AIDS.

Right to privacy

215. With regard to that issue, members wished to know which authorities could request the interception of private communications and what was the exact nature and purpose of the public reprimand set forth in article 130 of the Criminal Code.

216. In his reply, the representative of the State party said that the secrecy of correspondence and the inviolability of the home were guaranteed to citizens by the Constitution. However, the procurator could issue a decree derogating from that right in cases involving convicted criminals. No public

reprimand had been imposed in the last 10 years by Ukrainian courts and it was planned to abolish that punishment by excluding it from the new Criminal Code.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

217. With reference to that issue, members of the Committee wished to know what was the relationship between the new bill on freedom of conscience, which had just been enacted by the Supreme Soviet of the USSR, and the Act on Religious Associations in the Ukrainian SSR of 1 November 1976; whether all the rights of the Uniate Church had now been fully re-established, including its religious ties with the Holy See; whether any complaints had been lodged under article 134 (1) of the Criminal Code of the Ukrainian SSR; what measures had been taken to guarantee respect for pluralism in television programmes, particularly during elections; whether it was possible to set up an independent radio or television network; and whether there were provisions designed to punish the dissemination of false information. Additional information was also requested on recently drafted legislation relating to the press and to the lifting of censorship restrictions, as well as on the legal regime governing conscientious objection.

218. In his reply, the representative of the State party explained that the recently adopted legislation on freedom of conscience in the USSR, which was considerably more democratic than the legislative provisions currently in force in the Ukrainian SSR, would prevail over the latter. The new law specified that the activities of the Uniate Church were lawful and fully recognized its rights. Virtually all the denominations in existence in Ukraine could be registered under it. A large number of press organs were functioning in the USSR without any censorship, and it had been decided that any social, governmental, scientific or other organizations, and even individuals, should have the right to engage in activities in the media. Permission to publish was granted without restriction and no censorship was allowed. No special permission was required for publications printing fewer than 1,000 copies.

219. Responding to other questions, the representative noted that there was as yet no real private television network in the Ukrainian SSR. During electoral campaigns all candidates had an opportunity to explain their programmes and anyone who came under criticism from the media could exercise a right of reply. During the previous six months, 16 complaints had been filed under article 134 (1) of the Criminal Code, and the officials implicated had had to explain the adverse decisions against the complainants in court. Disclosure of state or military secrets; incitation to war, hatred or racial or religious intolerance; and dissemination of pornography or interference in the private life of citizens were prohibited by law. Any citizen who considered that he had been offended or injured could bring a complaint before a court and obtain compensation. The law establishing criminal liability for an attack on the honour and dignity of state officials had been repealed by the Supreme Soviet, and the new decree stated that only attacks on the honour and dignity of the President of the Republic could lead to prosecution.

Freedom of assembly and association

220. In connection with that issue, members of the Committee wished to know what progress had been achieved in establishing the basis for and regulation of public associations or organizations, including political parties other than the Communist Party of the Soviet Union; whether there had been any further progress in drafting legislation that would provide a framework for the legalization of informal organizations; whether all political parties had been allowed to register in time to put forward their candidates; whether the provision in the Ukrainian Constitution according to which the aim of associations was the construction of socialism had been amended; what conditions had to be met for a demonstration to be permitted; what penalties were prescribed in cases of contravention of the established procedure for the organization and conduct of assemblies; whether a meeting could be prohibited on the grounds that it was contrary to the Constitution of another Federative Republic; and whether investigations had been undertaken into the conduct of the police forces in dispersing students in October 1989.

221. In his reply, the representative of the State party said that, in addition to the Communist Party, the Republican Party, the Social Democratic Party, the Green Party and two Christian parties currently sat in Parliament. The legislation that continued to regulate the registration of social organizations dated back to the 1930s and had obviously become obsolete, but a new law on social organizations would enter into force on 1 January 1991. The activities of organizations could not give rise to any interference on the part of public authorities save in cases authorized by law. Electoral campaigns were financed directly by the State. Where an application for registration by a party or an organization had been rejected, it was possible to bring the matter before the courts, which might possibly reverse the decision. Organizations could not be dissolved by the State unless their activities were harmful.

222. Permission was not needed for indoor meetings but it was necessary to apply for permission in other cases, and penalties could be assessed when a meeting was held without such permission. In each region, a representative of the authorities and an executive committee were responsible for decisions as to whether to allow public meetings and demonstrations. Meetings could be prohibited only if their purpose was contrary to the Constitution and if there was a danger of disturbance of public order, and such decisions could be appealed before a superior body. The Office of the Procurator had recently conducted an investigation into the conduct of law enforcement officials on the occasion of action to prevent demonstrators from entering police premises, and it had concluded that the behaviour of the police had not been reprehensible.

Rights of persons belonging to minorities

223. With reference to that issue, members of the Committee wished to know whether any institutional measures were envisaged by the Government of the Ukrainian SSR to deal on a systematic basis with the problems of minorities and with the promotion of progress and reconciliation among the various national groups.

224. In his reply, the representative of the State party pointed out that although the problems of minorities in the Ukrainian SSR were not as serious as in other Republics, they nevertheless existed in connection with the resettlement of the Crimean Tartars in their homeland; the guarantee of the cultural rights of groups of Hungarian or Polish origin living in the west of Ukraine; and problems affecting the Russian-speaking population, which accounted for 20 per cent of the total population. School textbooks were published in Polish, Hungarian and Tartar, and steps were also being taken to make the resettlement of the Tartars easier by providing building materials and guaranteeing certain services. Legislation on the rights of minorities was currently under consideration in the Supreme Soviet providing, inter alia, for the establishment of national councils that could help, in particular, to resolve language problems.

Concluding observations

225. Members of the Committee expressed their thanks to the representatives of the State party for their cooperation and openness in presenting the third periodic report of the Ukrainian Soviet Socialist Republic and for having engaged in a fruitful and constructive dialogue with the Committee. Although the report had been drafted in conformity with the Committee's guidelines regarding the form and contents of reports from States parties under article 40 of the Covenant, members regretted that it did not contain specific references to actual practice in the implementation of legislative provisions. The State party had clearly demonstrated the intention of its Government, and of the recently elected Supreme Soviet, to guarantee to all persons under its jurisdiction the rights recognized in the Covenant. It was also clear that there had already been positive changes in legislation pertaining to civil and political rights, as well as improvement in actual practice.

226. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been entirely allayed, including those relating to the non-publication of statistics in respect of the death penalty; the absence in the legislation of the Ukrainian SSR of provisions equivalent to article 9, paragraph 3, of the Covenant; abuses of psychiatric treatment; administrative detention; corrective labour; the length of pre-trial detention; the right to freedom of movement and the definition of the concept of State security, which appeared to exceed the limits prescribed in article 12, paragraph 3, of the Covenant; and the right to freedom of expression. Members were also of the view that the judicial role of the Procurator's Office should be reconsidered; that human rights should be more precisely spelled out in the Constitution and in legislation; and that efforts should be made to continue to bring about changes in the habits of the law enforcement authorities and to create conditions, including economic conditions, that would be conducive to the genuine exercise of human rights. Members of the Committee also urged the State party to ratify the Optional Protocol to the Covenant.

227. The representative of the State party said that the Ukrainian Soviet Socialist Republic had at all times endeavoured to discharge conscientiously the obligations incumbent upon it under international instruments. Difficulties subsisted in the transitional phase through which the Ukrainian SSR was passing, and the Committee's comments would certainly help

in overcoming them. The remaining problems were not only legislative but were bound up with patterns of behaviour and states of mind and mental attitudes that were difficult to change. The views expressed by the Committee would be made public.

228. In concluding the consideration of the third periodic report of the Ukrainian SSR, the Chairman thanked the representative of the State party for having provided, through his detailed replies, the concrete information that was lacking in the report. In the new legislation that the Ukrainian SSR had undertaken to draw up and to promulgate, it would be important to take account of all the rights established in the Covenant and to ensure that only those restrictions and derogations expressly provided for were authorized. The progress made in the protection of human rights in the Ukrainian SSR was unquestionable, but it should continue.

Morocco

229. The Committee considered the second periodic report of Morocco (CCPR/C/42/Add.10) at its 1032nd to 1035th meetings, held on 7 and 8 November 1990 (see CCPR/C/SR.1032-1035). It was not possible during the time available at the fortieth session to complete the consideration of the report and, with the agreement of the Government of Morocco, the Committee decided to continue with its consideration at the forty-second session. At that session, however, owing to the request of the Moroccan delegation, the Committee decided to defer the consideration of the report to its forty-third session. The discussion of the report at the Committee's fortieth session is reflected in paragraphs 229 to 256 below.

230. The report was introduced by the representative of the State party, who drew attention to the founding in 1989 of the Union of the Arab Maghreb, consisting of Mauritania, Morocco, Algeria, Tunisia and the Libyan Arab Jamahiriya, which was a major regional event expected to bring progress and prosperity to a vast population with close historical, religious and cultural ties. The founders of the Union attached great importance to the cause of human rights, and the declaration proclaiming the Union reiterated the determination of the five heads of State concerned to work with the international community to establish an international order in which justice, dignity, freedom and human rights prevailed.

231. The representative noted that, at the national level, two important decisions had been taken recently to strengthen the rule of law and to enable citizens to defend their rights vis-à-vis the Administration, the authorities and the State itself. One of these had been the decision by King Hassan II to establish a Consultative Council for Human Rights under article 19 of the Constitution; the other related to the introduction of a bill, on 8 May 1990, to establish a system of administrative tribunals that would help to ensure administrative justice and to make available remedies to victims of abuses of power or prejudice on the part of administrative authorities. Measures had also been adopted to enhance the participation of Morocco's 860 local communities or communes in the conduct of public affairs and economic and social development. A group of non-governmental organizations and political parties was also currently working on a draft National Charter of Human Rights.

Constitutional and legal framework within which the Covenant is implemented

232. With reference to that issue, members of the Committee wished to know what the status of the Covenant was in relation to the Moroccan Constitution; whether the provisions of the Covenant were directly enforceable; whether the Covenant had become an integral part of Morocco's domestic legislation that could be invoked in the courts; whether Morocco accepted the principle of the precedence of international law over domestic law in the event of a conflict between the two; whether recourse could be had to the Moroccan courts in respect of violations of rights not recognized in domestic law but guaranteed by the Covenant; whether the authorities were giving any thought to amending the Constitution to take account of such rights; whether the courts had the power to abrogate legislation not in conformity with the Constitution or the Covenant; whether there had been any actual cases where court decisions had been based on the Covenant; whether a law had ever been disregarded by a court on the ground that it was contrary to the Covenant; what were the composition and functions of the Moroccan League for the Defence of Human Rights, the Moroccan Human Rights Association and the Moroccan Human Rights Organization; what factors and difficulties, if any, had affected the implementation of the Covenant; and what activities were undertaken relating to the promotion of greater public awareness of the provisions of the Covenant.

233. In addition, members of the Committee wished to know whether judges could be dismissed from office; whether everyone had access to the courts; what had been the purpose of establishing communal or district courts; what facilities were provided by the Government to help human rights organizations discharge their tasks; what were the composition and powers of the Royal Consultative Council, what were the results of its fact-finding operations, and whether citizens and other persons under Moroccan jurisdiction could have recourse to the Council; and whether the Moroccan Government intended to ratify the Optional Protocol. Regarding the constitutional position of the King, members of the Committee asked whether the King was accountable for his acts to any State body and whether the constitutionality of the laws promulgated by the King could be challenged. They also wondered how the independence of the judiciary was guaranteed when, according to article 33 of the Constitution, the King presided over the Supreme Council of the Judiciary and appointed the members of the judiciary by decree.

234. Members also wished to know what was the precise competence of the constitutional chamber of the Supreme Court; why discrimination on the grounds of political opinion had not been mentioned in the Constitution; what were the rights of aliens compared to those of citizens; and what control the judicial authority exerted over the actions of the police and local authorities. Finally, in view of the statements in paragraphs 36 and 37 of the report regarding the applicability of the Covenant, they requested the delegation to comment on the statement in the National Charter on Human Rights that was signed by various human rights and jurists' organizations indicating that there was an absence of effective protection of human rights in Morocco and that their implementation was still limited.

235. In his reply, the representative stated that civil and political rights guaranteed in the Covenant were granted under the Constitution to all Moroccan citizens without distinction as to membership of any race, ethnic, linguistic, religious or political group, or sex. In every subject area there was a code

or special law, and remedies were available in cases of abuse of authority or infringement of personal integrity or of property rights. A Consultative Council for Human Rights had been created on 8 May 1990 to monitor the activities of local authorities and assure citizens of direct recourse to the King. The courts had an obligation in all cases to apply the provisions of the law, and since such provisions were identical to those of the Covenant, the provisions of the latter were implicitly applied by the courts. Parties and their lawyers frequently invoked the principles enshrined in the Covenant, which in turn ensured that judges had to base themselves on those principles in formulating their views. The Moroccan League for the Defence of Human Rights and the Moroccan Human Rights Association had been set up by two political parties represented in Parliament. The Moroccan Human Rights Organization consisted of independent persons, lawyers, jurists, academicians and academics. The three organizations pursued their activities at the administrative, judicial, parliamentary and public level.

236. Concerning difficulties in implementing the Covenant, the representative said that Morocco had never encountered any obstacles affecting the public freedoms or civil and political rights of its inhabitants. The Covenant had been published in the official bulletin, and the press took every opportunity to mark the anniversary of the founding of the United Nations by reproducing the text of the Universal Declaration of Human Rights and the Covenant. Most international human rights instruments were also publicized by the press, and the second periodic report had been published by the national press in August 1990. The key principles of the Covenant had also been the subject of studies by universities, the Royal Academy and the National Institute for Judicial Studies. Replying to other questions, the representative said that the compatibility of treaties signed by Morocco with the Constitution had been ascertained by various ministerial commissions prior to their ratification. Morocco recognized the precedence of international law over domestic law. The courts had never ruled on the direct applicability of treaties, but lawyers often invoked treaty provisions before judges. The Moroccan Criminal Code and Code of Criminal Procedure guaranteed any person a fair trial. Laws could be amended by decree; the courts had no right to cancel laws altogether. The Supreme Council of the Judiciary was empowered to take disciplinary action against judges who committed administrative or criminal offences, but did not intervene in judicial matters. Judges were appointed on the recommendation of the Council. Human rights organizations were entitled to apply for financial assistance, which was granted to organizations serving the public interest.

237. The Royal Consultative Council, which was a purely advisory body serving the supreme administrative authorities of the country, including the King himself, was composed of advisers to the King, Ministry of Justice officials, judges and representatives of political parties and was headed by a senior Supreme Court judge. Individuals were free to address their complaints to the Council, which then drew up a report for submission to the King. An enormous number of individual complaints had already been brought before the Council. The fact that the reports of the Consultative Council to the King on cases before it had reflected dissenting opinions among its members constituted proof of its independence. In the final instance, the decision on those cases rested with the King. Individuals had the right to appeal against abuses by the police or public officials, and investigations and prosecutions by the courts or the Ministry of Justice received press coverage. Referring to the monarchy, the representative noted that 90 per cent of the population had

voted in favour of the present Constitution in a referendum. Under Islamic law, Muslims pledged allegiance to their leader in return for his protection and guidance in achieving political, economic and social progress. No political party in Morocco had ever sought the abolition of Islam and the monarchy. The National Charter of Human Rights was not yet an official document but merely a draft text under nationwide debate with a view to establishing future guidelines. It had been brought to the attention of the Government but was binding only on the political parties that had drafted it. The Charter would be taken into account by the authorities in so far as it was considered justified. The possibility of acceding to the Optional Protocol was currently under consideration.

Self-determination

238. In connection with that issue, members of the Committee asked the representative to comment on the problems relating to self-determination in Western Sahara in the context of the obligations assumed by the Kingdom of Morocco under article 1, paragraph 3, of the Covenant. They also wished to know whether human rights and freedoms in Western Sahara were suspended or made subject to restrictions; whether there had been any displacement of population; what was the current demographic composition in the region; what was the legal status accorded to the population of Western Sahara pending the outcome of the referendum and whether any distinction was drawn between population groups opposed to joining Morocco and those in favour of it; whether there were any plans to grant amnesty to persons sentenced to life imprisonment in the 1970s for having declared themselves to be in favour of a referendum; what measures had been taken with regard to the reported disappearance of a very large number of Saharans; whether Saharans had exactly the same identity documents as other Moroccans; and how the prohibition of statements expressing opinions different from those of the authorities relating to the status of Western Sahara could be reconciled with article 19 of the Covenant.

239. In his response, the representative reiterated the importance attached by Morocco to the right of peoples, in particular African peoples, to self-determination. With regard to Western Sahara, an outline of a settlement was taking shape. The Secretary-General of the United Nations was to draw up a timetable, in consultation with the parties, for the proclamation of a cease-fire and the holding of a self-determination referendum. The Saharan population was not treated differently from the rest of the Moroccan population since the Saharans formed an integral part of the Moroccan people. Saharans elected their own municipal councils and held positions of responsibility in the civil service. The Kingdom had not proclaimed a state of exception since 1976, even though the prevailing situation was tantamount to a state of war. The conflict had had no harmful effect on the economy or on the free movement of individuals. Individuals had been sentenced for having rejected the idea that Western Sahara formed part of Moroccan territory, but it was possible that the King might exercise his right of pardon.

240. With regard to the question of disappearances, the representative stated that an inquiry was being conducted, but that the allegations, while admittedly disturbing, did not seem to be very credible. The Government would provide all the necessary clarifications to the Working Group on Enforced or

Involuntary Disappearances of the United Nations Commission on Human Rights. The Saharan population's identity documents were absolutely identical to those of other Moroccans. With regard to individuals' responsibility for dissenting opinions, the representative explained that in Morocco there were only three major principles that were not open to challenge of any kind: the monarchic system, the fact that Islam was the State religion, and territorial integrity; if an individual deliberately challenged those principles he placed himself beyond the pale of his own society and had to assume responsibility for his declarations or acts.

State of emergency

241. With reference to that issue, members of the Committee wished to know what legal provisions existed, in addition to article 35 of the Constitution, in respect of the introduction and administration of a state of emergency, and to what extent such provisions, as well as article 35 of the Constitution itself, were deemed to be compatible with article 4, paragraph 2, of the Covenant; under what circumstances the state of siege could be proclaimed; whether in an emergency the King could assume both legislative and executive powers by decree and, if so, what procedures would apply; whether there was any way in which the judiciary or legislature could counterbalance the King's decision; and whether there were any provisions of law governing the duration of a state of emergency.

242. In reply, the representative noted that Morocco had no legal provisions governing states of exception beyond article 35 of the Constitution, which provided that "when the integrity of the national territory is threatened or events occur which are likely to imperil the functioning of constitutional institutions, the King may, after consulting the President of the Chamber of Representatives and addressing a message to the nation, issue a *dahir* proclaiming a state of exception". A state of siege was proclaimed with the consent of the Legislative Assembly. Initially, it could not last longer than 30 days and, if circumstances and the situation in the country so required, it could then be extended only by an act of Parliament. The administrative authorities were not authorized to take provisional measures restricting individual freedoms. Civil powers could not be transferred to the military authorities and no special courts could be set up. No internal conflict calling for the imposition of a state of emergency or state of siege had arisen in Morocco.

Non-discrimination and equality of the sexes

243. In connection with that issue, members of the Committee asked whether an alien husband of a Moroccan woman was eligible for Moroccan citizenship on the same basis as a foreign woman married to a Moroccan husband; what was the basis for the different treatment under Moroccan law of men and women in respect of their capacity to transmit Moroccan nationality automatically to children born outside the country; what distinctions existed between men and women under the inheritance laws; and in which respect were the rights of aliens restricted as compared with those of citizens.

244. In addition, members of the Committee wished to know under what conditions women could join trade unions; whether a woman could obtain a passport without the authorization of her husband or, if she was not married,

of her father; how many women held seats in Parliament and had access to the civil service, higher education and the liberal professions; whether the principle of "equal pay for equal work" was applied in both the public and private sectors; why Morocco had not ratified the Convention on the Elimination of All Forms of Discrimination against Women; whether conditions were imposed on foreign associations different from those to be met by national associations; whether men were entitled to the benefits granted to working women; what criteria were used in fixing the minimum wage; whether a marriage between a Muslim woman and a Catholic or Jewish man was valid under Moroccan law and, if so, which inheritance laws applied; whether there were secular laws of inheritance applicable to non-believers; what were the conditions to be fulfilled by women in order to stand for election; whether men also had to have acquired a minimum age of 25 years for that purpose; and whether women could become members of Parliament.

245. In his reply, the representative stated that the spouse of a Moroccan citizen did not automatically acquire Moroccan nationality. A foreign woman marrying a Moroccan could, after two years of marriage, acquire Moroccan nationality simply by an order of the Minister of Justice; foreign husbands must have been married for five years and obtain Moroccan nationality by decree. Moroccan nationality was in principle acquired at birth when the father was Moroccan and any child born in Morocco automatically acquired Moroccan nationality. In connection with the question of inheritance, there were three different systems in Morocco: Islamic law, which applied to citizens of the Muslim religion; Hebraic law, which applied to citizens of the Jewish faith; and the international system, which applied to aliens. However, inheritance laws in Morocco were based directly on the principles of the Koran, and women were in a somewhat less favourable position in that respect. However, women had never requested the abolition of the Koranic rules applicable to them with regard to personal and inheritance status. Aliens could not participate in local or general elections, be elected to local, municipal, communal or provincial assemblies or sit in the Chamber of Representatives.

246. In reply to other questions, the representative said that Moroccan men and women could join the party or trade union organization of their choice. A husband's consent to the passport application and travel of his wife was required. Equality between men and women applied to the right to participate in elections either as a voter or as a candidate. Women were currently members of communal and provincial assemblies but although a number of them had stood for Parliament none had been elected. Women were employed in public administration, the universities and local authorities, and the 1973 Act on the employment of women and minors stipulated that women must receive the same pay as men for the same work. Women could not serve in the police force or in the auxiliary forces and could not act as a representative of authority but could enlist in the army. They were not liable for military service, but, like men, they were obligated to do two years of civil service. Women working in the public or the private sector enjoyed special advantages linked with their female status. Foreign associations, banks and companies enjoyed the same rights as their Moroccan counterparts. The Ministry of Justice employed a counsellor to advise on matters of personal status and inheritance rights concerning Jews. The Mudawwana stipulated that there could be no right of inheritance between Muslims and non-believers.

Right to life

247. With reference to that issue, members of the Committee wished to know whether any consideration was being given to reducing the number of crimes carrying the death penalty or to the abolition of the death penalty; what the rules and regulations were governing the use of firearms by the police and security forces and whether there had been any violations of such rules and regulations; whether independent and impartial machinery existed to effectively investigate such violations; what disciplinary and other measures had been taken against those found guilty; and what measures had been taken to reduce the rate of infant mortality.

248. In addition, members of the Committee wished to know what crimes were considered as "offences against State security" and how many persons had been sentenced to death for such crimes; whether criminal laws could be applied retroactively, particularly those involving the death penalty; how many detainees were currently under sentence of death and what had been the nature of their crimes; what was meant by "crimes against the well-being of the Nation" and how many persons had been sentenced for such crimes; what measures had been taken by the authorities to investigate the deaths of inmates of Tazmamart prison and deaths during detention or police custody more generally; under what circumstances and what rules were persons charged with offences against the security or well-being of the State held in detention centres; whether persons had been condemned to death *in absentia*, without legal assistance or the benefit of witnesses; what means were available to families who wished to trace disappeared relatives or arrange for a detained relative to be brought immediately before a judge; whether any government body was empowered to investigate allegations of disappearances and, if so, what had been the results of its investigations; whether any officials suspected of involvement in disappearances had been prosecuted and convicted; whether, in respect of the disappearance of the Oufkir family, those responsible in the case had been identified and convicted and compensation awarded; whether abortion was permitted in Morocco; and how many victims were claimed by the conflict in Western Sahara.

249. In his reply, the representative said that the death penalty was applied in Morocco to punish only the most odious and abhorrent crimes for which the courts found no mitigating circumstances. It was based on the *lex talionis*, which had a religious origin. Its abolition was not under consideration, but its application was subject to fundamental guarantees: it could not be carried out before it had been appealed against by the accused or the Prosecutor-General and, if the appeal was rejected, a request for pardon was always submitted. In practice, the death penalty was usually suspended or commuted to life imprisonment. There had been no executions in Morocco in the past decade. The royal armed forces, the police and the auxiliary forces never opened fire on crowds without prior warning, which usually consisted of three shots into the air. When they did fire, it was always at the feet, and they did so only when forced. Anyone violating the regulations was subject to disciplinary action. Educational and vaccination campaigns for mothers and children were being carried out in cooperation with WHO and UNICEF.

250. Responding to other questions, the representative said that the only crimes carrying the death penalty were those listed in the Criminal Code. The expression "crimes against the well-being of the Nation" in the *dahir* of

29 October 1959 had to be seen in the context of the circumstances which had given rise to its promulgation. At that time, traders had mixed toxic mineral oils and detergents with vegetable oil and had put the resulting product on the market. As a consequence, 26,000 people had been paralysed and the catastrophe had been considered a national disaster. Since 1959, there had been no prosecutions under that dahir because no similar catastrophe had occurred. An ad hoc committee presided over by the Minister of Justice or his deputy and consisting of a number of senior officials met at least seven times a year to consider pardons, and its comments were submitted to the King. On the question of disappearances in the Sahara, there was considerable confusion over names, and the authorities frequently found themselves working on the basis of incorrect information. The fate of General Oufkir's family was an internal affair to which an appropriate solution would be found by the King. The question of the Oufkir family was not a matter in which international organizations or the State itself had been concerned; the lawyer in the case, at that time practising at the Paris Bar, had failed to respect the procedure laid down in the dahir which required him to contact a Moroccan lawyer and to submit a request through the Ministry of Justice, and his action had therefore been declared inadmissible. Civil trials in Morocco were conducted in accordance with the Code of Civil Procedure and criminal trials in accordance with the Code of Criminal Procedure. Abortion was prohibited in Morocco and subject to penalties under the Criminal Code. That Code also stated, however, that no penalty would be imposed if the health of the mother was such as to justify abortion. He noted that there were no political crimes in Morocco, although there were offences of opinion under the dahir of 15 November 1958. A crime against the external or internal security of the State was not a political offence but an ordinary offence under the jurisdiction of the ordinary courts.

251. With respect to places of detention, the representative explained that the prison administration was organized along hierarchical lines, with a central prison, several rural open-air prisons and some civil prisons. None of the detention centres to which members of the Committee had referred was known to him. There was no Tazmamart prison in the list of places of detention under the prison administration. With regard to deaths during detention, he said that in some cases of death during detention, the coroner had found, following a post-mortem examination, that death had resulted from violence leading to complications such as kidney failure. It had not been possible to discover who was responsible for those abuses, but one case of assault and battery involving unintentional homicide was currently before the court in Casablanca. A number of officers had been sentenced to varying periods of imprisonment for offences including rape, forcible entry into the home and arbitrary detention.

Treatment of prisoners and other detainees

252. In connection with that issue, members of the Committee wished to know whether there had been any complaints about torture or other mistreatment of prisoners or other detainees during the reporting period or any prosecutions or convictions under article 231 of the Criminal Code; whether information could be provided regarding prison regimes and conditions of detention in Morocco; and whether the provisions of the dahir of 11 April 1915 and the dahir of 26 June 1930 were compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

253. In addition, members of the Committee wished to know which civil rights could be lost under article 225 of the Criminal Code, and for how long; whether the King's Prosecutor and the examining magistrate could receive complaints from prisoners during visits to detention centres; whether an individual could have recourse to the King's Prosecutor or the supervisory commissions on behalf of a relative who was in prison; which authority controlled the Tazmamart detention centre; what was the general state of health among the prisoners; whether prisoners were always released as soon as their sentences were over; whether the provision in article 399 of the Moroccan Criminal Code laying down the death penalty for anyone guilty of "torture or barbarous acts" also applied to officials; whether the Government intended to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; what the rules were governing interrogation procedures; what steps the Government had taken to investigate allegations of torture; whether it had adopted any measures to prevent torture in the future; whether a suspect's lawyer could be present during interrogation; whether the police in Morocco received any human rights training; whether a confession made by a suspect while in police custody would be sufficient to secure conviction without further proof; what was the maximum period of pre-trial detention; and whether article 231 of the Code of Criminal Procedure implied that the court could admit police reports, and was even required to do so.

254. Replying to the questions on articles 231 and 225 of the Moroccan Criminal Code, the representative said that no examining magistrate in Morocco had ever been known to use violence during the interrogation of an accused person. Moroccan positive law ruled out any form of violence or torture, and any public official, superintendent or officer of the police who resorted to such methods did so on his own responsibility and would have to answer for it in court. Any confessions obtained by such methods were invalid. Torture and inhuman or degrading treatment on a systematic basis were unknown in Moroccan prisons. There were occasional riots or attacks on prison officers but, even then, the prison authorities never used force systematically. Complaints of ill-treatment made by prisoners were submitted to the administrative authorities and, in serious cases, to the Ministry of Justice, and a number of officials had been convicted of such offences. The treatment of prisoners had become much more humane, and ill-treatment as a disciplinary measure had been abandoned. The Ministry of Justice was preparing a new law governing conditions of detention, which would be fully consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners. Following the establishment of administrative tribunals, the State itself could now be called to account for its actions, at least under a procedure for financial compensation.

255. The prison population was growing rapidly owing to the rising crime rate, which was partly due to the population explosion and the country's economic problems. The number of prison establishments was inadequate, and their total capacity was only 7,000 for a prison population of 37,000. The insanitary prison at Laalou had now been closed and replaced by a more open and spacious prison. All the jails built by the Protectorate authorities had been closed, together with insanitary establishments. In its present economic circumstances, Morocco was not in a position to set about constructing enough prisons to house the prison population in accordance with the Standard Minimum Rules. With regard to a secret detention centre in Tazmamart, the representative said that since some international human rights organizations

had reported the existence of such a centre, his delegation would ask the Government about the matter. Any detained person was released once he had served his sentence. The serving of sentences was monitored by means of a central file at the prison administration headquarters in Rabat and a register kept at each prison. The "barbarous acts" referred to in article 399 of the Criminal Code was a term borrowed from French law that had become obsolete. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would probably be ratified in due course since it was in no way contrary to the country's Constitution or traditions. Loss of civil rights was very rarely applied as a punishment in Morocco.

256. With regard to judicial inquiries, the representative explained that the Code of Criminal Procedure provided for two phases: the preliminary inquiry, conducted by officers of the judicial police, during which the suspect was held in police custody and not permitted to contact a lawyer, and the pre-trial proceedings, conducted by an examining magistrate, at which time lawyers could be present during questioning. When the accused was questioned on his first appearance, he must be asked whether he was ready to answer questions put to him or not; otherwise the proceedings would be null and void. When the accused person was questioned for the second time the presence of a lawyer was compulsory, and if he did not choose one himself the examining magistrate appointed one on his behalf. A criminal court was required to base its findings on the proceedings at the hearing. Police reports were only a guide, and the courts had to weigh all the evidence in relation to the charges against the accused. Records or reports drawn up by officers of the judicial police and members of the gendarmerie on minor offences were accepted as authentic in the absence of proof to the contrary. Incommunicado detention did not exist in Morocco, but the family of a detained person was not informed since the family might try to get rid of evidence if it knew of his detention. The normal duration of police custody under the Code of Criminal Procedure was 48 hours, the maximum being 72 hours. The King's Prosecutor ensured that those time-limits were observed, and police custody could not be extended to 72 hours without his written agreement. At the police college in Kenitra, which trained officers for the judicial police, the training lasted two to three years and covered public law, private law and criminal law. The subjects taught included the role of international organizations, humanitarian law and human rights. Another college, for police commissioners, provided more thorough instruction in criminal law, and specifically in humanitarian law and human rights.

257. With reference to remand in custody, the representative explained that a distinction was made between two types of offence, those incurring penalties of less than two years' imprisonment and the rest. In the first case, the person could not be held for more than a month from the time of his first appearance before a magistrate unless he was a previous offender. In other cases, the maximum duration of remand in custody was four months. That period could only be prolonged by an order of the examining magistrate giving the specific reasons for the extension, which could not be for more than an additional four months. The prisoner could appeal against the decision to remand him or keep him in custody. He could in all cases ask to be released on bail and appeal against all adverse decisions.

India

258. The Committee considered the second periodic report of India (CCPR/C/37/Add.13) at its 1039th to 1042nd meetings, on 26 and 27 March 1991 (see CCPR/C/SR.1039-1042).

259. The report was introduced by the representative of the State party, who explained that India was a secular and democratic republic where freedom of thought, expression, belief, faith and worship were guaranteed to all citizens. The Constitution provided for parliamentary democracy with a division of powers among the legislature, the executive and the judiciary and established a union of states within a federal structure. Since the submission of India's initial report, the new State of Mizoram had come into existence, the former Union Territory of Arunachal Pradesh had been granted statehood, Goa had become a full-fledged State and Daman and Diu had been retained as a union territory. The latest general elections to the Ninth Lok Sabha had been held in November 1989.

260. The Supreme Court of India and the High Courts in the individual States ensured the effective implementation of human rights through a liberalized review of administrative action. Such liberalization had led to the growth of public interest litigation and the seizure of court jurisdiction in such matters, even on the basis of postcards or telegrams received from individuals or of stories or reports published in magazines or newspapers, and the provision of compulsory legal aid to the needy. The Indian judiciary had also made an important contribution to the safeguarding of other major areas of human rights, including the right to life and personal liberty, freedom of expression and speech and the protection of minorities. The Supreme Court had indicated that the death penalty should be used as an exception in extremely rare cases and even then only as a deterrent.

Constitutional and legal framework within which the Covenant is implemented

261. With regard to that issue, members of the Committee wished to receive clarification of the status of the Covenant within the Indian legal system. They asked, in particular, how contradictions between domestic legislation and the Covenant were resolved and whether there had been any cases during the period under review where the provisions of the Covenant had been directly invoked before the courts or referred to in court decisions or where a law had been rejected by a court on the ground that it was contrary to the Covenant. They also wished to know what further measures had been taken since the consideration of the initial report to disseminate information on the rights recognized in the Covenant, particularly among the various minority communities and law enforcement officers, especially those in the police and the army; and what factors and difficulties, if any, affected the implementation of the Covenant. In the latter regard, they inquired about the impact of India's large population and of its culture and traditions on the implementation of human rights contained in the Covenant, and about measures that had been taken to resolve conflicts that had led to violence in the past.

262. In addition, members of the Committee asked whether the Supreme Court was empowered to act in first instance on human rights violations routinely, or only in certain cases; what the scope and main features of epistolary jurisdiction were, particularly in the light of the large numbers of people who were illiterate, and what had prompted that jurisdiction's establishment.

Information was also sought as to whether the Government intended to accede to the Optional Protocol to the Covenant, enabling the Committee to receive and consider communications from individuals. It was further asked whether the Government was giving any thought to withdrawing some of its reservations to the Covenant, which amounted to restrictions with respect to a number of articles and the possibility of whole sections of the Covenant not being applied. Clarification was requested, in particular, on India's reservation to article 1 of the Covenant.

263. In his reply, the representative of the State party explained that in his country the rules of international law were incorporated into national law and considered to be part of it unless they were in conflict with an Act of Parliament. Article 51 of the Constitution, which provided that the State should endeavour to foster respect for international law and treaty obligations in the dealings of organized peoples with one another, was a directive principle of State policy, providing guidance for the executive and the legislature, but was not enforceable in the courts. No rights existed in India other than those that were guaranteed in the Constitution and, consequently, a citizen could claim that his rights had been violated only on the basis of a particular law, not on the basis of a provision of the Covenant. However, when a court examined challenges on the basis of a right guaranteed by the Constitution but restricted or denied by an ambiguous law, the court could overrule the law and interpret the right in question as including the full guarantees under the Covenant. The Supreme Court of India had observed that, in the event of doubt, the national rule was to be interpreted in accordance with the international obligations of the State. Since the rights included in the Covenant were reflected in the Indian Constitution and other laws, the question of contradictions between Indian legislation and other laws was purely hypothetical.

264. Referring to remedies available to individuals, he emphasized that any citizen was entitled to appeal directly to the Supreme Court in order to enforce his fundamental rights. In fact, proceedings could be initiated on the basis of an anonymous telephone call or a postcard to the Supreme Court. Where a large group of persons could not afford to bring an action, any person could file a litigation on their behalf under the system of public interest litigation and, under article 141 of the Constitution, any decision on such matter became binding on all courts in the nation.

265. With regard to the dissemination of information on the rights recognized in the Covenant, the representative of the State party explained that citizens of India were well acquainted with the basic human rights and fundamental freedoms embodied in it as a result of the efforts of the Government and its information agencies, and of radio and television programmes in all the country's languages. The Covenant, and other international instruments on human rights, had been translated into several Indian languages, and human rights, in the broadest sense, formed part of the curriculum and syllabus for children in school.

266. Replying to questions on the scope of India's reservation to article 1 of the Covenant, the representative stressed that territorial integrity and sovereignty had to be the basis of the right to self-determination. The term "self-determination" did not apply to citizens within Indian territory, but rather only to those living outside the territory of India under foreign domination.

State of emergency

267. With regard to that issue, members of the Committee wished to know whether the amendments to article 359 of the Constitution made it permissible in the State of Punjab to derogate from the right to life and the prohibition against torture, as well as from the other non-derogable rights mentioned in article 4, paragraph 2, of the Covenant and, if so, whether the Government of India planned to adopt legislation to make its domestic legal regime in this regard consistent with the Covenant; and what safeguards and effective remedies were available to individuals during a state of emergency.

268. In addition, further information was sought regarding a series of laws that had been passed in India relating to terrorism, notably the Armed Forces (Special Powers) Act, the National Security (Amendment) Act, and the Terrorist and Disruptive Activities (Prevention) Act. It was, in particular, inquired to what extent those Acts were consistent with provisions of the Covenant relating to the physical integrity of the person and the obligation to bring a person to trial with the least possible delay and, more generally, to provisions relating to preventive detention and article 4 of the Covenant; whether the authorization of the use of force even to the causing of death in accordance with those Acts was compatible with article 4, paragraph 2, and article 6 of the Covenant; why those acts had not been proclaimed as emergency legislation and notified as derogations from the Covenant; how an Indian citizen could avail himself before the courts of the rights provided for under article 4 of the Covenant; to what extent the commitment of the Government of India to the protection of human rights had been affected by the chronic instability in the regional situation mentioned in the report; and what measures had been taken to overcome the situations which had occasioned violence in the past and to ensure that legislation was effective in preserving respect for fundamental human rights.

269. In his reply, the representative of the State party said that the amendment providing for the suspension of article 21 of the Constitution referring to the right to life had been superseded and that even during a public emergency an individual enjoyed all the safeguards and remedies that were available at other times. Any suspension of other rights required presidential action and the approval of the legislature. In view of that procedure, as well as the relevant constitutional provisions, there was no possibility of indefinite suspension of power. Any legislation adopted in an emergency which was in conflict with the fundamental rights of the citizen would be struck down when the state of emergency was terminated.

270. Responding to other questions, the representative said that article 6 of the Covenant did not provide for an absolute prohibition on the taking of life, but only on the taking of life "arbitrarily". Section 4 of the Armed Forces (Special Powers) Act did not give army officers the right to fire upon civilians "arbitrarily", but only in extraordinary situations and under specific conditions. Moreover, the application of the Act in the absence of a national emergency was not a violation of article 4 of the Covenant because it was possible for the Government to declare an emergency situation in individual disturbed areas. The validity of the Armed Forces (Special Powers) Act had been challenged in the Assam courts and upheld by the New Delhi High Court. Furthermore, when acceding to the Covenant, India had expressed the clear reservation that it did so only subject to the provisions of

articles 22, 23 and 24 of its Constitution, which permitted preventive detention. The National Security (Amendment) Act authorized preventive detention where a threat existed to the defence or security of India. In view of the careful scrutiny of such cases by the Supreme Court, there was no doubt that Indian legislation did not contravene article 4 of the Covenant.

271. Referring to article 355 of the Constitution, the representative said that the Indian Government had reason to believe that the agitation for secession in certain border states was being aided and abetted by foreign elements infiltrating into Indian territory. Following reports from those states, stringent measures had become necessary in order to protect innocent people from being killed by terrorists.

Non-discrimination and equality of the sexes

272. With reference to that issue, members of the Committee wished to receive information on the effectiveness of the special provisions designed to promote the advancement of "any socially and educationally backward classes of citizens or the scheduled castes and the scheduled tribes"; on the participation of members of these groups and of women in the political and economic life of the country, including the percentage of government and public sector employment at present reserved for such groups; on whether the classification of "backwardness" was solely made on the basis of caste; on how membership in scheduled castes and scheduled tribes was determined in individual cases; and on in which respects, other than in the exercise of political rights, the rights of aliens were restricted as compared with those of citizens.

273. In addition, members wished to know whether any measures had been taken to combat the tradition according to which abortion of female foetuses was promoted in order to encourage families to have male children; how successful the amendment to the Equal Remuneration Act had been; and whether there was any remedy available for violations of the provisions of that Act.

274. In his reply, the representative of the State party explained that according to the 1981 census, about 105 million Indians were members of scheduled castes, while 54 million were members of scheduled tribes. The Government was required by the Constitution to reserve a certain number of posts and a certain number of seats in Parliament and in the state legislatures for members of scheduled castes and scheduled tribes. The Constitution also provided that the claims of members of scheduled castes or scheduled tribes should be taken into consideration in the appointment process for posts and services in connection with national or state affairs. Furthermore, a series of five-year plans for the advancement of "backward" classes was a priority element of national policy. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act had been enacted following the receipt of reports of atrocities committed against such persons.

275. There had been a progressive increase in the participation of women in India's economic and political life. Women represented 11.5 per cent of the work force in the public sector and 18 per cent of the work force in the private sector. Women were legally entitled to take qualifying examinations for posts in the top echelons of public administration, but relatively few women chose to take the examinations. Although there were no legal obstacles

to the participation of women in politics, no seats were specifically reserved for them. The Equal Remuneration Act had been in force for 14 years, and the extremely limited amount of litigation concerning alleged violations of that Act seemed to indicate that its provisions were rarely violated. Reports of destruction of female foetuses were alarming, and the Government was currently developing an information campaign against the practice of identifying the sex of foetuses and aborting them on the basis of their sex.

276. With respect to the treatment of aliens, the Supreme Court had recently ruled that the rights of Indian citizens, and particularly the provisions of article 14 of the Covenant, would also apply to foreigners who were legally in the territory of India, with certain exceptions regarding the acquisition of property.

Right to life

277. In connection with that issue, members of the Committee wished to know how many persons were currently on death row; how much time elapsed normally between the imposition and the execution of the death sentence; whether, since the submission of the initial report, that penalty had been extended to new offences; what procedure was followed in cases where the death sentence was commuted to life imprisonment on grounds of delay; whether the death sentence could be imposed for crimes committed by persons under 18 years of age; what the rules and regulations were governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent recurrence; and what progress had been made in reducing infant mortality in the period under review.

278. In addition, information was requested on measures taken to counter the increasingly widespread phenomenon of political killings and disappearances, as well as about allegations that thousands of people had lost their lives in ethnic strife and that many had been killed by members of the security forces. In the latter connection, it was asked what remedies were available in cases where a law enforcement officer had exceeded the terms of his authority or when police officers had been involved in cases of deaths in custody; whether the definition of an "assembly" within the terms of the Armed Forces (Special Powers) Act covered gatherings in private homes; and whether law enforcement officers had been informed of the United Nations Code of Conduct for Law Enforcement Officials.

279. Replying to questions raised in connection with the death penalty, the representative of the State party said that a condemned prisoner had a right to appeal to the High Court and to the Supreme Court against a death sentence imposed by a sessions court, and a right to appeal for clemency to the Governor of the particular state and to the President of India. If there was an undue delay between sentencing and execution, the Supreme Court could commute a death penalty to a life sentence. The Narcotic Drugs and Psychotropic Substances Act (1985), as amended in 1989, included the possibility of the imposition of a death sentence for repeat offences under the Act. A female child under the age of 18 years and a male child who had not attained the age of 16 years could not be sentenced to death.

280. Referring to questions raised about the excessive use of force by the police or the army, the representative emphasized that parts of India, notably the border areas, were suffering from terrorist outrages, some of them carried out by terrorists who wore the uniforms of the security forces in order to discredit the latter. Against such a background of killing and torture and a deliberate campaign to discredit the security forces, the Government had a duty to protect the nation. There had not, however, been any extrajudicial executions, and very strict rules of investigation were in place to examine any deaths in police custody. Should such a death occur, a magistrate would carry out an investigation and make a preliminary report. There were specific regulations on the use of firearms to disperse unlawful assemblies and also strict rules governing the use of the army to assist a civil power such as the police.

281. Specific enactments provided for action against excessive use of force by the police or the army. Section 4 of the Armed Forces (Special Powers) Act contained many restrictions on the use of armed forces. The use of firearms against an assembly of five persons or more was authorized only when such an assembly had itself already been declared illegal under an order promulgated by a magistrate. Section 7 of the Act, while protecting public servants from arbitrary prosecution, subjected their performance of duty to scrutiny by the Government.

282. Responding to other questions, the representative emphasized the steps taken by his Government with a view to reducing the infant mortality rate to below 60 per 1,000 live births. That goal could be achieved if the socio-economic conditions of the population, including female literacy and the availability of safe water supplies, improved.

Treatment of prisoners and other detainees

283. With reference to that issue, members of the Committee wished to know whether any consideration was being given to updating the Prisons Act, 1976; what controls had been instituted to ensure that persons arrested or detained were not subjected to torture or cruel, inhuman or degrading treatment; whether there was any machinery for carrying out an independent and impartial investigation into allegations of torture and of summary, arbitrary and extrajudicial executions; and whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and whether the relevant regulations and directives were known and accessible to prisoners.

284. They also wished to receive detailed information regarding procedures for receiving complaints under the Bonded Labour System (Abolition) Act, 1976; on arrangements for the supervision of places of detention and on procedures for receiving and investigating complaints; on the scientific classification of prisoners with a view to preventing exposure to criminals during custody mentioned in the report; on detention in institutions other than prisons and for reasons other than crimes; and on any measures taken to give effect to the right of prisoners not to be subjected without free consent to medical or scientific experimentation. Clarification was also requested of the alleged cases of torture and disappearances in the State of Manipur.

285. In his reply, the representative of the State party said that the Bonded Labour System (Abolition) Act was intended to put an end to the exploitation of certain sections of the population. Since bonded labourers were among the weakest and poorest members of society, the Act avoided any complex, technical procedures for receiving complaints and instead made the States responsible for ascertaining whether bonded labour existed within their jurisdiction. Such powers might be conferred on district magistrates with the assistance of "Vigilance Committees".

286. Referring to questions about conditions of detention, he explained that the All-India Committee on Jail Reforms had made recommendations on prison administration, particularly the improvement of conditions for certain categories of prisoners, water supply and sanitary facilities, training of prison staff and vocational programmes to assist in the rehabilitation of prisoners. Most of the recommendations had been implemented by the States. The state governments had also been advised to appoint a Board of Visitors in each district who would visit all police lock-ups to ensure that prisoners under trial were lodged in separate facilities from those used for convicted inmates.

287. The Supreme Court had held that recourse to third-degree methods by police officers resulting in the death of a person in police custody was a serious and aggravated offence and that the punishment for such offences should be sufficiently severe to deter others from indulging in such behaviour. The Mental Health Act of 1987 protected citizens from being detained in psychiatric institutions without sufficient cause and prescribed conditions for the licensing and control of such institutions. The right not to be subjected to compulsory medical or scientific experimentation was implied in articles 19 and 21 of the Constitution.

Liberty and security of the person

288. With regard to that issue, members of the Committee wished to know what the maximum length of detention was for persons who remained in custody pending trial; what legal, administrative or other safeguards were provided against involuntary disappearances of persons; and whether there had been any cases of involuntary disappearances where the remedy of *habeas corpus* or other effective remedies had been successfully applied.

289. In his reply, the representative of the State party said that the police could not detain an accused person arrested without a warrant for more than 24 hours. The Judicial Magistrate could, however, authorize the detention of an accused person in police custody for a period not exceeding 15 days or, in custody other than that of the police, for longer periods. *Habeas corpus* was an effective remedy in cases involving disappearances.

Right to a fair trial

290. In connection with that issue, members of the Committee wished to receive detailed information on measures taken to reduce the cost of litigation and the delays involved in the judicial process; and on the rules which applied to the appointment, recruitment and advancement of magistrates. They also asked how extensively the free legal aid and advisory scheme under the Legal Services Authority Act, 1987, had been resorted to since the enactment of the

legislation. Clarification was also sought concerning the compatibility of several provisions of the Terrorist and Disruptive Activities (Prevention) Act, dealing with the establishment of tribunals and the conduct of all proceedings *in camera*, with article 14 of the Covenant.

291. In his reply, the representative of the State party said that under the Administrative Tribunals Act of 1985 a Central Administrative Tribunal had been set up to provide speedy and inexpensive justice to central government employees in respect of service-related issues. In the light of the experience acquired by the *lok adalats*, which were experimental alternative or informal systems for settling disputes, the parliament had passed the Legal Services Authority Act. The purpose of that Act was to implement article 39A of the Constitution, which provided that the State would provide free legal aid.

292. Judges appointed to the designated courts established under the Terrorist and Disruptive Activities (Prevention) Act were officials with special experience, independence and fearlessness. Secrecy was very important for witnesses in terrorism cases, and article 16 of the Act aimed primarily at their protection and that of investigating officers while seeking to strike a balance between the requirements of publicity and of safety. In such cases *in camera* proceedings were appropriate and consistent with article 14 of the Covenant, which provided for specific exceptions to the obligation to hold hearings in public.

Freedom of movement and expulsion of aliens

293. In connection with that issue, members of the Committee wished to know what legal provisions governed the expulsion of aliens and whether an appeal against an expulsion order had suspensive effect. They also requested information on the success to date of the Government's strategy aimed at promoting the safe return of refugees to their countries of origin.

294. In his reply, the representative of the State party said that matters concerning the movement of aliens in India were specifically governed by section 3 of the Foreigners Act of 1946. Under article 14 of the Constitution, a foreigner in India had the right of recourse to judicial process in the event of a violation of his rights. The courts were free to order any appropriate remedies, including interim orders with suspensive effect. Referring to the need for an amicable resolution of refugee problems, he explained that once the refugees' countries of origin had established conditions conducive to the safe return of refugees to their homes, India facilitated their return. An agreement reached between India and Sri Lanka on 29 July 1987 had resulted in the repatriation of more than 25,000 Indian and Sri Lankan refugees over a period of 15 months without any incident.

Right to privacy

295. With regard to that issue, members of the Committee wished to receive information concerning the law and practice relating to permissible interference with the right to privacy and on legislation concerning the collection and safeguarding of personal data.

296. In his reply, the representative of the State party explained that the right to privacy was governed by the Constitution and by relevant civil and criminal laws. Data concerning personal information could be collected under the Census Act of 1948 and the Registration of Births and Deaths Act of 1969. Information collected under those Acts was confidential and was currently being computerized.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

297. With reference to that issue, members of the Committee inquired what laws and regulations governed the recognition of religions or religious sects by public authorities and what controls were exercised on the freedom of the press and the mass media. Further information was also requested on the degree of access to official information enjoyed by the general public and the media, especially in view of the alleged difficulties experienced by journalists in visiting Kashmir and in covering the predicament of the Naga people.

298. In his reply, the representative of the State party said that India was a secular democratic republic consisting of several communities with different religious faiths and beliefs. The Constitution and other relevant laws protected the religious rights of all persons. Freedom of the press and the mass media were covered under article 19 of the Constitution and were subject to reasonable restrictions. The Press Council of India, a body constituted under the Press Council Act of 1978, was responsible for preserving the freedom of the press. Since the members of the Press Council were involved in the press and in newspaper publishing, any restrictions on the freedom of the press could be said to be self-imposed.

299. Under the Cinematographic Act of 1952, any person desiring to exhibit a film had to apply to the Cinematographic Board for permission. A film would not be certified if it presented a misleading image of the social, cultural or political institutions of India, or if it ran counter, *inter alia*, to the interests of the sovereignty and integrity of India, the security of the State, public order, decency or morality. In 1990, the Parliament had passed the Prasar Bharati (Broadcasting Corporation of India) Act which sought to take the mass media away from full government control.

Freedom of assembly and association

300. In connection with that issue, members of the Committee wished to receive information about the number, membership, organization and effectiveness of trade unions in India.

301. In his reply, the representative of the State party said that the Central Trade Union Organizations included more than 10,000 unions and that the membership of trade unions was approximately 10.25 million.

Protection of the family and children

302. With regard to that issue, members of the Committee wished to receive information on the main features of the Commission of Sati (Prevention) Act of 1987; on any reported cases of sati since the passage of the Act; on the Dowry

Prohibition (Amendment) Act of 1986 and, in particular, on the number of dowry deaths before and after the enactment of such legislation; on the effectiveness to date of the Dowry Prohibition (Amendment) Act and of the amendments to the Penal Code, the Code of Criminal Procedure and other legislation relating to arranged marriage, child marriage and divorce; and on the activities undertaken by the Child Welfare Boards established pursuant to the Children Act. Information was also sought on the impact on the right of equality before the law of some provisions of Hindu or Muslim personal law under which polygamy was tolerated or of the laws allowing different treatment of the sexes as to the causes for divorce.

303. In his reply, the representative of the State party said that the Commission of Sati (Prevention) Act provided for the prevention of the commission of sati, and made glorification of it, through any ceremony, procession or function, an offence. Special courts to try sati-related offences were to be created, and responsibility for implementing the provisions of the Act lay with the state governments and Union Territory administrations. No case of commission of sati had, however, been reported since the passage of the Act.

304. An offence committed under the Dowry Prohibition (Amendment) Act of 1986 was non-bailable and the Criminal Law (Second Amendment) Act had been amended to deal effectively not only with cases of dowry death but also with cruelty to married women. A section had also been added to the Indian Penal Code with a view to providing protection to women and discouraging atrocities and cruelty against them. Anyone found guilty of committing dowry death was subjected to punishment by imprisonment for from seven years to life. The problem of offences against women was a source of serious concern for the Government and needed to be addressed in a broader social framework, through their full integration and participation in national development. India's difficulty in reaching the goal of equality was more a social than a law enforcement problem.

305. Child marriage, in spite of the prohibition of such practice by law, was deeply entrenched in certain sections of Indian society, and the Government had taken steps to educate the people about its consequences. Furthermore, the Child Labour (Prohibition and Regulation) Act prohibited the employment of children under the age of 14 in certain hazardous occupations and provided for the regulation of their conditions of work in all other jobs. The Government had a national policy on child labour to rehabilitate children withdrawn from prohibited employment and to provide education, health care and other services for working children. Cases under the Juvenile Justice Act were to be brought speedily before Juvenile Welfare Boards and the juvenile was to be sent to an observation home or place of safety during the inquiry unless he was staying with his parents or a guardian.

Rights of persons belonging to minorities

306. With regard to that issue, members of the Committee requested clarification of the statement in the report that "the reference to ethnic minority does not apply to Indian society"; and of the functions and activities of the Minorities Commission. They also asked whether there were any special factors and difficulties in the effective enjoyment by minorities of their rights under the Covenant.

307. In his reply, the representative of the State party explained that although there were religious and linguistic minorities in India, the Indian people formed a composite whole racially, and hence the concept of ethnic minorities and ethnic majority did not apply. All human and fundamental rights and mechanisms for redress were equally available to minorities, which also enjoyed a specific constitutional right to establish and administer educational institutions. The Minorities Commission had been set up in 1978 to safeguard the interests of minorities and to review the implementation of constitutional safeguards for different minority groups. In addition, a Special Officer for Linguistic Minorities had been appointed and a Minorities Cell had been set up. The Minorities Cell ensured fuller participation by minorities in all aspects of national life, through coordinating and monitoring the implementation of a 15-point programme aimed, inter alia, at preventing communal violence, promoting communal harmony and giving minorities special consideration in recruitment to services such as the state and central police forces.

Concluding observations

308. Members of the Committee expressed their thanks to the representatives of the State party for their cooperation in presenting the second periodic report of India and for having engaged in a fruitful and constructive dialogue with the Committee. Although the report had been drafted in conformity with the Committee's guidelines regarding the form and contents of reports from States parties under article 40 of the Covenant, it failed to refer to practice and the specific implementation of legislative provisions and, in that respect, was deficient. Satisfaction was expressed over the improvements that had occurred since the consideration of the initial report of India, including, in particular, the legislation recently enacted to prohibit the practice of sati, the measures taken to prevent "dowry deaths", the efforts made on behalf of the scheduled castes and tribes, the role of the Supreme Court in upholding provisions of the Covenant that were not contained in the Indian Constitution, and the new provisions on legal aid.

309. At the same time, the consideration of the second periodic report had also highlighted some of the difficulties India had faced in implementing the Covenant, partly as a result of the country's size, economic problems and demographic composition, and the concerns expressed by members of the Committee had not been entirely allayed. Furthermore, the reservations entered by the Government and the fact that the provisions of the Covenant had not been fully incorporated in the Constitution tended to make it difficult to identify clearly the extent to which the Covenant was actually implemented in India. In that connection, members pointed out that rights, other than those limited by a specific limitation clause in the Covenant, could only be restricted by means of a formal derogation under article 4 of the Covenant; and that several provisions of the Armed Forces (Special Powers) Act, the National Security (Amendment) Act, and the Terrorist and Disruptive Activities (Prevention) Act seemed to be incompatible with articles 6, 9 and 14 of the Covenant.

310. Concerns were also expressed with respect to a number of issues such as the implementation of the Covenant in "disturbed" areas; arbitrary killings and arrests in some states; police excesses and the mistreatment of detainees; the failure to bring proceedings against police offenders; the system of

preventive detention; and problems relating to the implementation of articles 19 and 22 of the Covenant and of the rights of persons belonging to minorities. It was also felt that greater efforts should be made to eliminate discriminatory practices rooted in India's social and ethnic diversity. Members of the Committee, in conclusion, expressed the hope that India, with its democratic traditions and institutions, would succeed in overcoming its difficulties with regard to the implementation of the Covenant and that the third periodic report would reflect continuing progress towards that goal.

311. The representative of the State party assured members that there had been no misuse of the powers conferred under the Armed Forces (Special Powers) Act, the National Security (Amendment) Act, and the Terrorist and Disruptive Activities (Prevention) Act and that the third periodic report of India would contain updated information on those matters that were of concern to the Committee.

312. In concluding the consideration of the second periodic report of India, the Chairman thanked the representative of the State party for his cooperation and urged the State party to ratify the Optional Protocol to the Covenant.

Sweden

313. The Committee considered the third periodic report of Sweden (CCPR/C/58/Add.7) at its 1042nd to 1044th meetings, on 27 and 28 March 1991 (see CCPR/C/SR.1042-1044).

314. The report was introduced by the representative of the State party, who referred to important changes bearing on human rights that had occurred since the consideration of the second periodic report. In that connection, he noted that Sweden had ratified the Second Optional Protocol to the Covenant, aimed at the abolition of the death penalty, and had sought to improve the situation of children through the ratification of the Convention on the Rights of the Child. A study had also been conducted of various amendments to the Code of Judicial Procedure in order to review the impact of new provisions on deprivation of liberty in criminal cases. In addition, new legislation on terrorism was under consideration in order to ensure a safe and controlled judicial procedure. Under the proposed legislation, execution of an expulsion order would be prohibited if a presumed terrorist risked persecution, and the movements of presumed terrorists within the country would not be restricted.

Constitutional and legal framework within which the Covenant is implemented

315. With regard to that issue, members of the Committee wished to know whether there was any procedure whereby Swedish legislation could be questioned on grounds of inconsistency with the Covenant and requested information on the actual application of amendments to the Code of Judicial Procedure relating to the obligation of the Public Prosecutor to prepare and present an injured party's claim for damages. Further information was also sought on the follow-up given to views expressed by the Committee under the Optional Protocol.

316. In his reply, the representative of the State party explained that international treaties had to be incorporated into Swedish legislation before they became applicable. Accordingly, the question of inconsistency did not arise. In order to ensure that domestic legislation was in conformity with international law, it was scrutinized from the standpoint of Sweden's international commitments and there was a general rule that domestic legislation was to be interpreted in the light of the country's international obligations. The principal effect of any judgements by the European Court of Human Rights or of the views expressed by the Committee was to alert the Swedish Government to possible flaws in its legislation. If Sweden was found to be in violation of the Covenant it would react by analysing whether the violation consisted of the improper application of Swedish law to a particular case or whether the law itself was faulty.

317. Amendments to chapter 22 of the Code of Judicial Procedure represented an attempt to strengthen the position of the victims of crime by making it easier for them to pursue claims for damages. The requirement for prosecutors to present an injured party's claim for damages at a preliminary stage expedited a thorough investigation. The initial impact of the amendments had been a drop in the number of cases in which claims for damages were separated from criminal aspects.

Non-discrimination and equality of the sexes

318. With reference to that issue, members of the Committee wished to receive information concerning the activities of the Ombudsman against Ethnic Discrimination and of the Advisory Committee on Questions concerning Ethnic Discrimination; the effectiveness of these institutions; the linkage between the functions of that Ombudsman and the Parliamentary Ombudsman; the results of the evaluation of the Equal Opportunities Act by the special committee established by the Government; and the opportunities available to aliens in the job market, including jobs in the civil service. They also wished to know whether numerical equality between women and men was the only factor taken into consideration in the decision-making process for policies to combat sex-based discrimination; how the Government maintained a balance between the goal of non-discrimination and respect for indigenous cultures; whether there had been any cases in which aliens had been allowed to reside in Sweden but had not been allowed to work; and what difficulties the large number of asylum-seekers had generated for the Government.

319. In his reply, the representative of the State party said that the activities of the Ombudsman against Ethnic Discrimination included advice and assistance in individual cases of alleged discrimination, general investigative and information activities and advisory services to the Government. In order to avoid any controversy which could jeopardize the position of respect in which the Ombudsman against Ethnic Discrimination was held by ethnic minorities, the Act against Ethnic Discrimination had not authorized him to take action in court, nor had it given him supervisory powers over other authorities. The Parliamentary Ombudsman, on the other hand, did enjoy such powers and there was close cooperation between the two institutions.

320. The special committee to evaluate the Equal Opportunities Act had made a number of proposals to enhance the Act's effectiveness and, after various organizations had expressed their views on the report, the Government had submitted a bill to Parliament in February 1991 that included a proposal for a new Equal Opportunities Act, imposing stricter obligations on employers to strive towards greater equality in the labour market. The bill also included steps to combat violence against women and a proposal to establish a committee to investigate and to recommend measures to rectify differences in salaries between women and men. Progress towards the goal of equality of the sexes required changes in the attitudes of both men and women that were not easy to measure. In that context, numerical equality was a primary consideration because it was a visible sign of progress.

321. With the exception of security-related posts and certain professions such as those of judge and lawyer, which were not available to aliens, the Swedish labour market was open to aliens. The unemployment rate for non-Nordics was, however, much higher than for Nordics, and special allocations had therefore been made under labour market assistance programmes for activities to secure job opportunities for aliens. A newly established committee was considering possible legislation to ban discrimination against aliens in the workplace. Sweden had not been at war since 1814 and restrictions on certain categories of persons had been enforced only during the Second World War. A wide range of problems arose during the asylum-seeking process itself and during the subsequent process of absorption of those granted asylum. In that regard, the primary aim of all the steps taken by the Government was to place aliens in jobs as soon as possible. The International Labour Board had been given government funding to help it achieve that goal.

322. About 2,500 Sami were currently engaged in their traditional livelihood of reindeer herding. Since such activity involved about one third of Sweden's land area, it had been felt necessary to limit the number of reindeer-herding groups and, consequently, Sami villages had been authorized to take decisions freely on which persons were to be admitted into the villages as herders. The Government was currently considering the proposals of its Commission on the Legal Position of the Samis with respect to such questions as to whether reindeer herding should continue to be restricted to members of Sami villages. Sweden's policy towards the Sami people was the result of careful consideration of how to balance the interests of society in general and respect for the Sami culture.

Liberty and security of the person

323. In connection with that issue, members of the Committee wished to receive information concerning the results of the study on the application of the amendments to chapter 24 of the Code of Judicial Procedure in respect of deprivation of liberty; the conditions of compulsory care for alcohol and drug abusers; and safeguards against any abuses in that latter regard. They also wished to know whether there had been any departures from the 1989 Act in respect of the period of pre-trial detention for terrorists; whether the planned legislation to replace the Act on the Provision of Institutional Psychiatric Care had been enacted; and what the situation was with respect to the implementation of the 1989 Act containing special provisions on the detention of aliens.

324. Clarification was also requested concerning provisions governing immediate care orders issued by the police; the difference between the justifications for a detention order based, respectively, on "reasonable suspicion", "probable cause" and "reasonable grounds"; reasons for detention other than criminal charges; reasons for placing juvenile offenders together with adult offenders; and remedies available under the new legislation on psychiatric treatment. Members also wished to know why an alien, unlike a citizen, could be detained for up to three days after having been taken into custody; whether there had been any cases of imprisonment on grounds other than criminal offences; for what length of time a court could authorize a prolongation of detention on remand; how soon after arrest a person could contact a lawyer; and why the judicial authority did not grant bail.

325. In his reply, the representative of the State party said that since the adoption of new amendments to the Code of Judicial Procedure, the total time in detention, from the provisional decision until a final decision was reached, had decreased and that more than 90 per cent of all cases of provisional detention had been examined by a judge within three days. On the other hand, many judges, prosecutors, defence lawyers and policemen felt that the quality of the investigative material available to the examining judge had deteriorated since less time was available to prepare it.

326. The use of the term "reasonable suspicion" to replace "probable cause" or "reasonable grounds" had not caused major differences in the number of detentions on remand but only in the speed with which decisions were taken. There was, however, a risk of abuse, and Parliament would keep the application of the provision under review. Certain prerequisites had to be met for legal counsel to be provided to aliens in detention; however, the three-day period was a maximum. The period of custody was sometimes less, and when an expulsion order was issued legal counsel was always provided. The only difference in the treatment of Swedes and aliens with respect to detention on remand arose when an alien had no place of residence in Sweden, particularly in cases of attempts to enter Sweden unlawfully. In such situations, aliens had to be taken into custody to prevent them from going into hiding. Pre-trial detention for 14 days was provided for under the 1989 Act on Terrorists, with the possibility of requesting a decision on further detention provided there were strong grounds and after a hearing on the matter.

327. Turning to other questions, the representative of the State party explained that since very few people would have sufficient means to pay bail, the institution of a bail system would be considered by Swedish society as an infringement of citizens' right to equality before the courts. On the other hand, if the person involved agreed, he or she might not be subject to detention on remand but might simply have to remain in the town and report to the police at certain intervals. With regard to the prolongation of detention on remand, the general rule was that, although possible, it should be avoided. The deadline for presentation of charges by the prosecution was specified by the judge ordering the detention on remand, but the usual deadline was two weeks. Under normal circumstances, the regulations concerning detention on remand provided specifically that if a prisoner wished to do so, he was free to mingle with other prisoners in the same place of detention.

328. The aim of the new Care of Alcoholics, Drug Abusers and Abusers of Volatile Solvents (Special Provisions) Act was to motivate the abuser to participate voluntarily in the treatment. The 1988 Act had expanded the provision of compulsory care because investigations had revealed a sharp rise in drug and alcohol abuse among the socially disadvantaged and rising deaths among abusers. It clarified the responsibilities of social welfare committees and included care at a stage when symptoms were less acute, so that an individual could be treated before his condition had deteriorated too far. The time-limit for compulsory care, which was six months, could not be exceeded, and compulsory care orders were decided upon by the courts. The number of persons under compulsory care had risen from 350 in 1988 to 750 in 1989. Decisions on admission to compulsory care had risen from 15,000 to 16,000 and the average period of care had increased from 75 to 130 days.

329. The main aim of the new legislation on compulsory psychiatric care was to adapt the law to the evolution of psychiatry, which now favoured out-patient treatment and treatment at psychiatric clinics in ordinary hospitals. Compulsory care would therefore be more strictly limited, in order to strengthen the patient's capacity for living independently and for voluntarily continuing treatment and support. It also established legal time-limits for periods of psychiatric care and ensured greater judicial control by making court proceedings mandatory after an initial period of care.

Right to a fair trial

330. With regard to that issue, members of the Committee wished to receive information on the procedure and criteria for the selection of professional and lay judges who served in the general courts, as well as on their role in reaching decisions, and on the procedure for promoting judges. It was also asked what the number and proportion of women in the judiciary were; whether there were any restrictions on the nationality of lawyers practising in Sweden; and whether an acquittal could be reversed after a new trial solely in order to prevent the credibility of the judicial system from being called into question. Clarification was also requested of the regulations governing the implementation of article 14, paragraph 3 (g), of the Covenant.

331. In his reply, the representative of the State party explained that being a professional judge entailed holding a state office. When persons were considered for that office, only such objective factors as merit and competence were considered. Permanent judges were appointed by the Government and had to be Swedish nationals and possess law degrees. There were a number of safeguards against the Government's misuse of its power to appoint judges. Lay judges were chosen by means of elections, and efforts were made to ensure that they were representative of the population with respect to age, sex and occupation. Every Swedish national who was not a minor or legally incompetent could be elected as a lay judge for the municipality or the county in which he or she lived. In reaching decisions, professional and lay judges each had one vote; the majority opinion prevailed. There were many women in the legal profession, and they accounted for 50 per cent of all applicants for trainee posts in courts of appeal. All lawyers practising in Sweden had to be Swedish citizens, but a person appearing as counsel before a court did not have to be a member of the Swedish Bar Association except in criminal proceedings.

332. There was no requirement that a person appearing in court swear an oath to tell the truth, and a confession was not sufficient to justify a verdict against an accused person. It was for the courts themselves to determine the truth and to decide what kind of evidence was to be presented and whether the evidence submitted was germane. Since statements to the police might not have been made freely, or a defendant who had told the police the truth might subsequently decide that that would not serve him well in court, it was natural that a court should ask a defendant to explain if his testimony in court differed from what he had told the police.

333. The reservation to article 14, paragraph 7, of the Covenant was intended to cover cases in which evidence had come to light, after a defendant had been convicted, indicating that he was in fact innocent, or in which subsequent evidence made it clear that a defendant had been wrongfully acquitted of a serious charge. The credibility of the judicial system was not the only issue at stake. Rather, it was thought that the public might be alarmed to learn that guilty persons were at large.

Freedom of movement and expulsion of aliens

334. With reference to that issue, members of the Committee requested information concerning the findings and proposals of the National Council of Crime Prevention based on its review of how legislation concerning restraining orders had been implemented. They also wished to know whether any new measures designed to make that legislation more effective had been adopted; whether the review by the Parliamentary Committee of the provisions of section 3 of the Act on Terrorists had been completed; what appeals procedure against expulsion orders was available in cases of refusal of entry or of expulsion on the grounds of an expired residency permit; and whether absence of any possibility of appeal in case of expulsion on grounds of national security and presumed terrorist activities was compatible with article 13 of the Covenant. Concerning the specific situation of several Turkish citizens of Kurdish descent, clarification was sought as to the length of time before their arrest could be challenged; why the normal rules governing telephone-tapping and searches had not been applied; and whether the non-reviewable designation by the Government of a person as a potential terrorist affected only those aliens who would otherwise be subject to expulsion.

335. In his reply, the representative of the State party explained that restraining orders served as one means of protecting individuals who had already been victims of crime or who were being pursued and harassed by others. Under the amendment to the Act on Restraining Orders adopted in April 1990, a person who failed to abide by the prohibition against visiting or contacting another individual could be sentenced to one year's imprisonment.

336. Concerning the matter of expulsions, the representative stated that a balance had to be struck in any legislation governing expulsion on grounds of national security and presumed terrorist activities between ensuring the effectiveness of measures and guaranteeing the individuals involved the best possible safeguards. The proposed new legislation in that area would give the courts a more prominent role, although not the right to make a decision. The proposed expulsion of a presumed terrorist could be submitted to a court for an opinion as to whether the evidence was sufficient and the criteria for

expulsion had been met, but ultimately such matters concerned national security and foreign policy and had to be left to the Government to decide, thereby ruling out the possibility of an appeal. Since the legislation came into force in 1975 it had affected only 20 individuals who, in the view of the Government, represented a threat to national security. Furthermore, presumed terrorists could not be expelled to countries where they could face torture, death or similar treatment, and proposals had been made to strengthen the role of the courts in that regard. If a presumed terrorist was allowed to remain in the country for humanitarian reasons, the need for control would still exist and the normal rules restricting telephone-tapping and searches could not be applied. Expulsions other than those under the Act on Terrorists could be appealed. Where an appeal related to the asylum process or to the withdrawal of a right, it could be directed to the highest instance, the Government.

337. The Swedish Government had deemed persons connected to the PKK organization to be potential terrorists, and as such to be extremely dangerous to Swedish society, particularly in view of the fact that two murders had been committed on Swedish territory and of their suspected involvement in other actions. Of the nine people originally in the group, one was serving a prison sentence, the expulsion orders on two others had been waived, and the remaining six had only to report once a week to the police.

Right to privacy

338. In connection with that issue, members of the Committee wished to know whether the Parliamentary Committee that had been looking into questions relating to the registration of personal information had issued a report and, if so, what the main conclusions and recommendations had been; whether any action had been taken on the Data and Publicity Commission's proposal aimed at strengthening the protection of personal information contained in computerized files used in the health field; what measures were envisaged under the proposed legislation aimed at prohibiting the sale of personal information without the permission of Parliament and under proposals for regulating and limiting the use of personal identification numbers (PINs); and what remedies were available in cases of interference with a citizen's privacy by means of data banks and electronic surveillance.

339. In his reply, the representative of the State party said that the Parliamentary Committee dealing with the registration of personal information had delivered its report in June 1990 and had recommended, *inter alia*, that it should be made easier for individuals to have access to personal information and that decisions as to what information concerning a person was to be released should be taken by an independent board. The Data and Publicity Commission's report had resulted in the submission of a bill to Parliament to regulate the flow of information within municipal and county health-care systems for statistical, research and administrative purposes. The Government considered that under the existing provisions the sale of personal information was ruled out except as specifically authorized by law or agreed to by the Government and had proposed that the Data Act should be clarified to avoid misunderstandings. It had also been proposed that PINs could be included in a file only under certain circumstances, such as when careful identification of the registered person was necessary.

340. Referring to safeguards under the Data Act, the representative stated that if an individual alleged that a computerized file contained incorrect information on him he was entitled to know what steps had been taken in response to his complaint. If an individual was harmed by incorrect or misleading information in a file, the keeper of the file was liable to pay damages. The Data Inspectorate could revoke permits to maintain files. Legislation relating to electronic surveillance provided that the county administrative board had to give permission for the placement of surveillance cameras that monitored areas accessible to the general public. Illegal wire-tapping was punishable under chapter IV of the Penal Code by fines or imprisonment of up to five years.

Freedom of religion and expression; prohibition of propaganda for war and of incitement to national, racial or religious hatred

341. With regard to that issue, members of the Committee wished to know what were the current status and prospects of the debate on the separation of Church and State and what the current status of plans was for legislative action on proposals adopted by the Commission on Freedom of Expression, whether there had been any prosecutions under chapter 16, section 8, of the Penal Code, as amended, relating to the dissemination of racist statements; and whether any action had been taken on the envisaged amendments to the Ordinance on Cinema Performances.

342. In his reply, the representative of the State party emphasized that the ties between Church and State in his country were centuries old, which was why the question had not yet been resolved. The Church, to which more than 90 per cent of the population belonged, had acquired a structure which enabled it to take decisions in most matters through representative bodies. At the request of the General Senate of the Church, the Government had appointed a committee to propose solutions to the economic and legal problems that could arise if the current relationship between Church and State was to be radically altered.

343. A new bill on freedom of expression, which in essence would extend the same protection to new electronic media as had already been extended to print media, was currently before Parliament. There had been five or six cases in 1990 in which individuals had been found guilty of breaches of chapter 16, section 8, of the Penal Code, and new legislation concerning freedom of performances had been enacted in 1990. Problems relating to the use of video technology for the distribution of violent images were being dealt with through intensified surveillance of the market and harsher penalties.

Protection of the family

344. In connection with that issue, members of the Committee requested information on the status of the proposed bill to replace the Care of Young Persons Act and inquired whether the new legislation, if enacted, would provide divorced parents with increased access to their children. Clarification was also sought of the provision relating to the detention of immigrant children while the status of their parents was being investigated.

345. In his reply, the representative of the State party stated that since the entry into force of the new Care of Young Persons Act, the criteria for the public care of children had been rendered more precise, taking into account either conditions at home or the young person's behaviour. When a decision to prohibit removal of a child was taken by the social welfare committee, the committee was also authorized to decide on the parents' access to the child during the period of prohibition. Such decisions were subject to review by the county administrative courts. Legislation in Sweden made provision for remand in custody of the children of asylum seekers if it was evident that the children would conceal themselves in order to avoid an impending order. In 1990, some 30,000 asylum seekers and 260 children had been taken into custody. The normal practice, however, was not to separate the child from his or her legal guardian.

Rights of persons belonging to minorities

346. With regard to that issue, members of the Committee wished to know whether any action had been taken to resolve the questions raised in the main report submitted by the Governmental Commission on the Legal Position of the Samis and whether Sweden had experienced any difficulties in reconciling the rights conferred under articles 26 and 27 of the Covenant with the traditional values of specific minorities, for example with regard to the equality of the sexes. In addition, information was requested on provisions governing State funding of religious communities.

347. In his reply, the representative of the State party said that information on the bill resulting from the report of the Governmental Commission on the Legal Position of the Samis would be provided in the next periodic report. Where the rights of minorities were concerned, every effort was made to ensure that minorities would be able to preserve their own cultural heritage. However, the exercise of that right had to be consonant with public order and Swedish legislation. The practice of female circumcision, for example, was illegal in Sweden.

Concluding observations

348. Members of the Committee commended the Swedish delegation for its report and for having engaged in a constructive dialogue with the Committee, noting that Sweden had one of the most outstanding human rights records in the world. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been fully allayed. In common with many other States parties, Sweden had not incorporated the Covenant into its domestic legislation, as a result of which there were some gaps between the provisions of the Covenant and Swedish law. Concerns were also expressed about the absence of remedies for persons expelled from Swedish territory because of suspected terrorist involvement; the possibility of extended periods of solitary confinement; the procedure for admitting refugees to Swedish territory; and rules regarding the censorship of extreme violence in the media. The provisions of articles 16 and 17 of the Constitution, which did not bar discrimination based on the grounds of language, political opinion, property, birth or other status, did not appear to be compatible with the Covenant. It was also regretted that article 9 (3) was not yet the basis of Swedish practice concerning bail. It was also not evident from the Swedish Constitution that the judiciary was completely separate from the legislative and executive branches.

349. The representative of the State party recalled that his Government had contributed to the formulation of various international human rights instruments and had supported the establishment of monitoring bodies to which States parties should report regarding the fulfilment of their obligations. It was therefore quite natural for Sweden to engage in a constructive dialogue with the Committee.

350. In concluding the consideration of the third periodic report of Sweden, the Chairman thanked the representative of the State party for his cooperation. The discussion of provisions relating to discrimination had been particularly useful because in societies where gross violations did not occur such issues constituted a central element in the protection of human rights.

United Kingdom of Great Britain and Northern Ireland

351. The Committee considered the third periodic report of the United Kingdom of Great Britain and Northern Ireland (CCPR/C/58/Add.6, Add.11 and Add.12) at its 1045th to 1050th meetings, on 1 to 3 April 1991 (see CCPR/C/SR.1045-1050).

352. The report was introduced by the representative of the State party, who noted that a Royal Commission had been appointed on 4 March 1991 to undertake a wide-ranging review, embracing all stages of the criminal justice process in England and Wales, to examine whether there were further ways in which the administration of justice could be improved. Significant measures had also been announced regarding the prison system, and a white paper was being prepared on that subject. The pace and completeness with which law, practice and capacity in the dependent territories could be aligned with norms codified under the Covenant varied according to their diversity. The aim of the Government was to provide dependent territories with security, political stability and efficient, honest and representative government while taking full account of local customs and views. Moreover, it was the Government's policy to remain ready to respond positively when independence was the clearly and constitutionally expressed wish of the people.

353. Exceptional measures to help counter the threat of terrorism were still needed, and among them was the power to detain suspects for up to seven days under the Prevention of Terrorism (Temporary Provisions) Act. In that latter respect, the Government had decided in December 1988 to avail itself of the right of derogation laid down in article 4 of the Covenant and in article 15 of the European Convention on Human Rights.

354. The Sino-British Joint Declaration of 1984, under which Hong Kong would revert to the People's Republic of China on 1 July 1997, made specific provision for the Covenant to remain in force after that date. The Basic Law for the future Hong Kong Special Administrative Region, which had just been promulgated, reproduced that provision in its article 39. Furthermore, a Bill of Rights, which, when enacted, would make justiciable the rights and freedoms contained in the Covenant, had been introduced into Hong Kong's legislature. It was also the intention of the Government to seek an amendment to the Letters Patent to ensure that no future legislature could enact any law inconsistent with the Covenant.

Constitutional and legal framework within which the Covenant is implemented

355. With regard to that issue, members of the Committee wished to know whether the United Kingdom intended to review its reservations to the Covenant and to withdraw some or all of them; whether any consideration had been given to ratifying the Optional Protocol to the Covenant; and whether any consideration was being given to incorporating the Covenant into the domestic law of the United Kingdom and the dependent territories, particularly in view of the fact that common law rules did not always accord exactly with the corresponding provisions of the Covenant and that United Kingdom legislation was sometimes not generally applicable throughout the realm. In that latter regard, it was also inquired whether any consideration was being given to the adoption of a bill of rights in view of the number of judgements delivered by the European Court of Human Rights in cases concerning the United Kingdom and what kind of difficulties were expected to arise in the process of unifying the British legal system. Clarification was also requested of the apparent contradiction in the Cayman Islands legislation that, on the one hand, required legislation in contravention with the Covenant to be revoked but seemed to allow for the adoption of new laws that might be in violation of its provisions; of the position of the Government during the Gulf conflict; and of the legal reasoning behind the reservation to article 1 of the Covenant on the grounds that the United Kingdom's obligations under articles 1, 2 and 73 of the Charter of the United Nations took precedence over the Covenant.

356. Referring to the specific situation in Hong Kong, members of the Committee inquired whether the Hong Kong Bill of Rights had supremacy over other laws; whether, in the view of the Government, the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, especially its articles 39 and 158, corresponded to the Sino-British Joint Declaration of 1984; whether the Basic Law corresponded to the United Kingdom's intention to secure the application of the Covenant in the future Administrative Region; whether the Government planned to discuss possible inconsistencies between the Basic Law and the Covenant with the Government of the People's Republic China before the Joint Declaration would be fully implemented; what sanctions would apply if one of the parties to the Joint Declaration failed to respect the agreement after 1997; what arrangements had been contemplated for ensuring that reporting obligations relating to Hong Kong would be met after 1997; and what had been the experience to date with the operations of Hong Kong's Commissioner for Administrative Complaints. In addition, members wished to know whether the Bill of Rights, once adopted, would be enshrined in the Constitution; whether the proposed one-year freeze scheduled to follow the adoption of the Bill of Rights could be extended; whether consideration had been given to making use of article 151 of the Basic Law to enable Hong Kong to become a party to the Covenant directly; whether courts of the Hong Kong Special Administrative Region would be entitled to interpret the Basic Law after 1997; what the composition, status and functions were of the Law Reform Commission; what was the meaning of the term "as applied to Hong Kong", used in article 39 of the Basic Law; and the extent to which the United Kingdom's obligations towards Hong Kong were affected by its reservations concerning article 25 of the Covenant.

357. In his reply, the representative of the State party said that careful consideration had been given to the issues involved in incorporating the Covenant into domestic law and that the Government would review its policy in

the light of the Committee's views. While incorporation of the Covenant would not be incompatible with United Kingdom law, it would represent a major change in the country's constitutional arrangements. Since such a highly complex exercise would involve an essentially political decision, based on a close examination of the ways in which existing United Kingdom law fulfilled the country's obligations under the Covenant, it was unlikely that any decision would be taken in the immediate future. Differences in the law as it applied in various parts of the United Kingdom reflected long-standing traditions to which people in the regions attached great importance and there was no need to move towards a completely unified system when the different approaches were equally compatible with the United Kingdom's international obligations.

358. The Government considered that obligations undertaken under the European Convention on Human Rights were not regarded as a conclusive argument for not ratifying the Optional Protocol and that the Covenant differed from the European Convention in certain substantive respects. It had, however, no current plans to become a party to the Optional Protocol to the Covenant. The inhabitants of most of the dependent territories could resort to the same regional procedures for the protection of human rights as were available to the inhabitants of the United Kingdom. The only Territories in which the Covenant, but not the European Convention, applied were Pitcairn and Hong Kong. In regard to the latter, the Government was concentrating on implementation of the Joint Declaration and the Bill of Rights. Procedures under sections 39 (2) and 41 of the Constitution of the Cayman Islands were applied very rarely, since the greatest care was taken to ensure that bills were compatible with treaty obligations.

359. Following Iraq's invasion of Kuwait, the United Kingdom's forces had been deployed alongside those of other members of the international coalition in response to an appeal made by countries of the region for assistance in the defence of their territory. Such assistance had been rendered in accordance with the Charter of the United Nations, and the Government rejected most firmly any suggestion that the use of force by the coalition had been excessive.

360. Reservations to various provisions of the Covenant were kept under constant review and, with the exception of the reservation in respect of article 25 concerning the Isle of Man, would all be retained. The Government's declaration in connection with article 1 of the Covenant did not constitute a reservation and had been made at a time when the right of self-determination was less clearly defined than was now the case. It merely stated that in the event of a conflict between the United Kingdom's obligations under article 1 of the Covenant and those of the Charter, the latter would prevail. If a decision was taken to remove a particular reservation in respect of Hong Kong the United Kingdom Government would have to consider the implications for the Joint Declaration and the need to ensure the continuity of the relevant obligations after 1997.

361. Referring to other questions relating to Hong Kong, the representative explained that the Basic Law was on the whole consistent with the basic principles enshrined in the Joint Declaration and corresponded with the Government's intention to secure the continued application of the Covenant beyond 1997. Furthermore, both the Joint Declaration and article 39 of the Basic Law provided that the Covenant would remain in force after 1997. The

precise modalities regarding reporting obligations would be discussed in due course, and any breaches of the Joint Declaration would be regarded as a very serious matter. Under articles 19 and 158 of the Basic Law, which gave effect to corresponding provisions of the Joint Declaration, it would be for the Hong Kong courts to interpret the Basic Law for all matters in respect of which Hong Kong would have autonomy. There was no danger that the phrase "as applied to Hong Kong", contained in article 39 of the Basic Law, would result in an imperfect implementation of the Covenant in Hong Kong. To the contrary, every effort would be made to remedy any inconsistencies between the application of the Covenant in law and its implementation in practice.

362. The Hong Kong Bill of Rights had been framed so as to embody the provisions of both the Covenant and the Joint Declaration in one instrument that would survive the 1997 transition. The status of the Bill of Rights, once adopted, would be similar to that of any other ordinance in Hong Kong, which meant that it could be amended and repealed. Articles 3 (2) and 4 of the Bill of Rights gave the Covenant supremacy over other Hong Kong laws. They provided that all pre-existing legislation that did not admit of a construction consistent with the Bill of Rights was, to the extent of the inconsistency, repealed and that all legislation enacted subsequently should be construed as being subject to the Bill of Rights. The Bill of Rights could not be in contradiction with the Basic Law, which provided that legislation could be adopted by a simple majority.

363. The Law Reform Commission was composed of 15 members. Its work was delegated to subcommittees dealing with special issues thought to represent legal problems. The purpose of the one-year "freeze", which could be renewed for an additional year on existing legislation, was to prevent lacunae from arising should an existing law be struck down by the new Bill of Rights, especially in the area of law enforcement. A number of groups had, however, voiced opposition to the freeze and the Government would make public its response to those representations in the very near future. It was also planned to amend the Letters Patent, which were the source of legislative power in Hong Kong and which would fall away on 1 July 1997, to prohibit the enactment of any law that restricted rights and freedoms in a manner inconsistent with the Covenant and to entrench the Covenant. The Office of the Commissioner for Administrative Complaints had been operating effectively since 1 March 1989 and had already received 372 complaints. Departments against which complaints had been made had acted to remedy procedural defects or correct errors highlighted by the investigation of the complaint. The Commissioner had, however, concluded in his second annual report that the current referral system was fairly narrow and did in fact discourage complaints; consequently, the Government intended to review the system in 1992.

Self-determination

364. With reference to that issue, members of the Committee wished to receive information on the prospects for a definitive resolution of the situation in Northern Ireland and asked whether there were any plans to consult the inhabitants of Hong Kong about their attitude towards their envisaged status after 1997. In addition, it was inquired whether the people of Hong Kong had been invited to express their wishes concerning their own future at the time of the Joint Declaration; what the composition of the legislature would be after 1997; and whether the weight of functional constituencies in the

legislature did not constitute a potential for discrimination. Information was also requested regarding the specific situation of the part of the territory of Hong Kong which was not subject to the lease that expired in 1997 and about the Government's efforts to resolve its dispute with Argentina regarding the Falkland Islands (Malvinas).

365. In his reply, the representative of the State party noted that terrorism in Northern Ireland was a continuing problem and that the Government was still attempting to counter it. The Anglo-Irish Agreement of 1986 was a binding treaty which stipulated that the status of Northern Ireland was to be determined by the democratic choice of the people of Northern Ireland. After 14 months of preliminary exchanges between the Secretary of State, the Irish Government and the four main constitutional parties in Northern Ireland, the Secretary of State had, on 26 March 1991, announced the establishment of a basis for formal political talks. It had, nevertheless, been recognized that the announcement marked only the beginning of a very long and difficult process.

366. Responding to other questions, he said that the people of the Falkland Islands expressed their views in regular elections and that there was no doubt that their wish was to remain under British sovereignty. Since the 1990 agreement between the United Kingdom and Argentina, the two Governments had been able to agree on a number of issues relating to activities in the Islands and in the South Atlantic region in general.

367. Turning to the question of the exercise of the right to self-determination by the people of Hong Kong, the representative highlighted the unique situation of the Territory, which was subject to a lease that would expire in 1997. Following the signing of the Joint Declaration in 1984, an Assessment Office had been established to evaluate the views of the people of Hong Kong, who were found to be largely in favour of the text. The Basic Law Drafting Committee consisted of 59 members, 23 of whom were from Hong Kong, and a Basic Law Consultative Committee, consisting exclusively of Hong Kong representatives, had been set up to determine public opinion in the Territory with regard to the draft Basic Law. The Hong Kong Government had issued a statement to the effect that it welcomed the intensive consultations which China had conducted with the people of Hong Kong during the drafting process and that efforts had been made to take account of the concerns expressed by Hong Kong during the consultation process.

368. Under the Treaty of Nanking of 1842 and the Convention of Peking of 1860, Hong Kong islands and a part of the Kowloon Peninsula had been leased to the British Government in perpetuity. The rest of the territory (the New Territories), comprising 92 per cent of the total land area, had been leased to Britain for 99 years. The Chinese Government had consistently taken the view that the whole of Hong Kong was Chinese territory and that the treaties relating to Hong Kong were unequal. It was clear that the remaining 8 per cent of Hong Kong's land area would not be viable without the New Territories which contained most of the territory's agriculture and industry, its power stations, its airport and container port. Hong Kong Island, the Kowloon Peninsula and the New Territories had therefore to be taken as a whole in the negotiations between the United Kingdom and the People's Republic of China on the future of Hong Kong.

369. In response to questions about the composition of the legislature in 1996, he said that while democracy in Hong Kong had been encouraged, it seemed unlikely, in view of recent history, that it would come about quickly. The establishment of functional constituencies in Hong Kong had been the first step taken towards the progressive development of representative government at the central level in Hong Kong. They partly replaced the Governor's appointment of representatives of major professional, social and economic groups. On the day the Basic Law was promulgated, the National People's Congress of the People's Republic of China had issued a decision on the future composition of the Hong Kong Special Administrative Region. There would be a 60-member legislature, 20 to be directly elected, 30 to be elected through the functional constituencies and 10 to be returned by the electoral committees. According to article 68 of the Basic Law, the ultimate aim was the election of all the members of the Legislative Council by universal suffrage.

State of emergency

370. In connection with that issue, members of the Committee wished to receive information concerning the Government's current views on the problem of extended detention. In addition, it was asked how legislation applicable in Northern Ireland, especially the provisions of the Northern Ireland (Emergency Provisions) Act of 1978 relating to the application of conditional release and the admissibility of evidence, could be reconciled with articles 10 (3) and 14 (3) (g) of the Covenant. Clarification was also requested of the Parliament's specific powers in its regular reviewing of emergency legislation; of the safeguards against abuse of the seven-day period of detention; and of the Government's intentions in respect of the judgement of the European Court on Human Rights in the case of Brogan and others. Members wished to know whether provisions under the Immigration Act, 1971, which made it possible to dispense with protections that the law would normally provide to suspects and to detain people indefinitely without trial, was compatible with article 9 of the Covenant and whether the Government intended to enter, in that regard, an express derogation under article 4 of the Covenant; whether Hong Kong emergency regulations, especially those referred to in article 18 (4) of the Basic Law, were compatible with article 4 of the Covenant; what was the meaning of the terms "turmoil" and "national unity or security", used in article 18 (4) of the Basic Law; and whether the Basic Law authorized derogations of rights in situations that were less serious than those envisaged in the Covenant.

371. In his reply, the representative of the State party said that one of the features of terrorist activities was the extreme difficulty in obtaining evidence, not least because of the fear which terrorist activities engendered in people who might otherwise be willing to help. Furthermore, time was needed to collect, examine and analyse evidence and information which might result in the establishment of a criminal case. For that reason, the power to arrest a person suspected of terrorist activities and to detain the suspect for a maximum period of seven days was not in any sense arbitrary. Although the possibility of incorporating some form of judicial procedure into such arrangements had been seriously examined, it had been concluded that many difficulties would be involved because of the danger that disclosure would create for the source of the information. There were safeguards, however, to protect those who had been arrested and were being questioned under the powers to arrest persons suspected of terrorist activities. The European Court on

Human Rights had found that there had been a violation of article 5, paragraph 3, and article 5, paragraph 5, of the European Convention on Human Rights, but it had made clear its understanding of the difficult situation the United Kingdom faced in Northern Ireland and had not held that the legislation under consideration was either unnecessary or undesirable.

372. The Government's powers to deport under the Immigration Act applied only to a specific category of persons, and the persons to whom it was applied had the right of appeal, with the exception of those whose deportations were ordered specifically on grounds of national security. Moreover, detention could only occur in cases where grounds for deportation existed and did not involve denial of access to the courts. In the cases involving several Iraqis and Palestinians, deportation action had been taken in connection with a very specific threat and the dangers flowing from it.

373. Clause 5 of the draft Hong Kong Bill of Rights reproduced article 4 of the Covenant. Furthermore, in order to resolve any inconsistency between the Covenant and any Hong Kong regulations, a comprehensive review of all ordinances in force would be carried out with the aim of ensuring strict respect for the Bill of Rights. Under article 18 (4) of the Basic Law, relevant national laws might be applied only during a state of war and when turmoil endangered national unity or security. There was no inconsistency between that provision and article 4 of the Covenant.

Non-discrimination and equality of the sexes

374. In connection with that issue, members of the Committee wished to know whether any further consideration was being given to reviewing the remaining discriminatory provisions under the Immigration Rules, particularly those discriminating between male and female students from abroad and wives and husbands of deportees; whether members of ethnic minority groups facing criminal charges were informed systematically of the relative advantages or drawbacks of opting for a trial before a jury or pleading guilty; whether the planned legislation to ensure the equal treatment of males and females in matters of succession had been enacted; whether steps were being taken to eliminate alleged discrimination against women in some sectors of public employment, such as the police, and to ensure equality of opportunity in both the public and private sectors; and whether progressive measures in favour of women would also be introduced in Hong Kong. It was also inquired why prisoners had no right to vote in the United Kingdom; why assistance from the Commission for Racial Equality was provided in fewer than 20 per cent of cases of alleged discrimination; what role the Standing Advisory Commission on Human Rights played in relation to laws adopted after the enactment of the Northern Ireland Constitution Act of 1973; and whether the Convention on the Elimination of All Forms of Discrimination against Women, which the United Kingdom had just ratified, would apply to Hong Kong, in particular with respect to equal pay for equal work, family property and inheritance questions. Members also sought clarification of the statement in the report that the prison system in England and Wales needed a clearly stated policy on race issues, and further information was requested about the Government's intention to reduce religious discrimination in Northern Ireland by enacting a Fair Employment (Northern Ireland) Act and establishing a Fair Employment Tribunal. In that regard, it was asked why the establishment of a special tribunal had been felt necessary; whether job applicants were required to

state their religious affiliation; whether there was an optimal ratio of Protestants, Catholics and others in various job categories; and what the functions were of the Fair Employment Commission.

375. In his reply, the representative of the State party said that the provisions of the immigration laws prescribing different treatment on the basis of gender were very few in number and very limited in scope. The Government was, however, faced with a difficult choice between doing away with gender discrimination in a manner that would bring hardship to categories of people who had previously not been discriminated against and weakening its control over immigration. The policy on race issues was implemented in England and Wales because the greatest incidence of racial discrimination occurred there. The policy related to the operational services such as police and prisons, and was a broad statement of principle on non-discrimination in the delivery of services. Codes of conduct outlawing discrimination existed for a number of professions, including the legal profession and probationary officers.

376. The Standing Advisory Committee on Human Rights, established by the Northern Ireland Constitution Act, had responsibility for advising the Secretary of State on the adequacy of legislation for the prevention of discrimination on the grounds of religious beliefs and political opinion. Under the Fair Employment (Northern Ireland) Act, 1989, the Fair Employment Commission was empowered to decide on individual cases of alleged discrimination, advise prospective complainants, and award damages for financial loss, loss of opportunity and injury to feelings. The Fair Employment Tribunal could order employers to comply with the instructions of the Commission within a certain time-frame, subject to certain penalties. Legislation to ensure the equal treatment of males and females in matters of succession had not yet been enacted and was still under review by a committee of the States of Jersey. The Equal Opportunities Commission was responsible for reviewing and, as necessary, proposing changes in equal opportunity legislation. It also provided assistance to victims of alleged sex discrimination and, in certain cases, provided full legal support before the industrial tribunals or the high courts. The Government's policy on the voting rights of prisoners was aimed at maintaining good order and discipline in the prisons.

377. The elaboration of the Bill of Rights had heightened awareness in Hong Kong of human rights issues, including women's rights. As a consequence, a study was being conducted on the social, legal and economic obligations under the Convention on the Elimination of All Forms of Discrimination against Women and its potential impact in Hong Kong. With regard to equality of the sexes, there was no specific programme for the advancement of women in the civil service, but in reality equality prevailed.

Right to life

378. With regard to that issue, members of the Committee wished to know under which circumstances and what rules the military forces could take over police functions and whether they could resort to the use of lethal weapons more freely than the police. Information was also requested on the Report of Review by H.M. Chief Inspector of Prisons of Suicide and Self-Harm in Prison Service Establishments in England and Wales of December 1990 and on the

measures undertaken based on its findings. In addition, clarification was requested of the rules and regulations governing the use of firearms by the police and security forces in Northern Ireland and of the inquest procedure in cases of killings by members of the security forces. In that regard, it was asked how many deaths had occurred as a result of the use of force by the police; in how many such cases had the victims been unarmed; whether any inquiries had been initiated; and whether disciplinary proceedings had been conducted against those found guilty. It was also inquired what steps had been taken to prevent suicide among persons detained under immigration powers; how many death sentences had been imposed in Hong Kong in the past decade; and whether the Government was considering abolishing the death penalty in the dependent territories, particularly in Hong Kong, in view of the transfer of sovereignty in 1997.

379. In his reply, the representative of the State party said that, when summoned to support the civil authorities, members of the armed forces were present purely to assist as needed and did not themselves possess police powers. Only that degree of force which was reasonable in the circumstances was permissible. Detailed instructions were provided on the use of firearms, indicating that they were to be used as a last resort where there was a threat to life and, where practicable, after due warning had been given. Members of the armed forces and the police could be prosecuted if they used firearms unlawfully. Ten individual incidents in which deaths had been caused by members of the security forces had occurred in Northern Ireland in 1990, compared to four and six in 1989 and 1988, respectively. Each incident had been fully investigated and the evidence obtained had been weighed by an independent official. That procedure had resulted in the institution of criminal proceedings against some members of the security forces. The question of suicide and self-harm in prisons was taken very seriously by the Government, which was seeking to reduce the incidence of those phenomena to a minimum. With respect to detention under immigration powers, only a small proportion of the approximately 20,000 persons who were refused entry into the country each year were detained. Steps had been taken to prevent suicide occurring in such facilities. Whenever possible, people were granted temporary admission instead of being detained. Conditions in special detention facilities were kept as congenial as possible and such facilities were thoroughly inspected. A board of visitors had been established to hear complaints.

380. The Government had become concerned about the discrepancy between its practice and that of the dependent territories in the Caribbean with respect to the death penalty. Although public opinion in the Caribbean Territories tended to favour retention of the death penalty, it had been announced on 28 March 1991 that an Order in Council would be moved to substitute life imprisonment for the death penalty in murder cases in the Cayman Islands, the British Virgin Islands, the Turks and Caicos Islands, Montserrat and Anguilla. The last death sentence in Hong Kong had been carried out in November 1966, and since then the death sentences of 243 persons had been commuted to life imprisonment or specific prison sentences. However, most people in Hong Kong wished to retain the death penalty as a deterrent to serious crime. Furthermore, according to the Joint Declaration, the laws currently in force in Hong Kong would remain basically unchanged after 1997 and, therefore, the death penalty would not become applicable to a broader range of crimes unless the Hong Kong Administration so decided.

Prohibition of torture and cruel, inhuman or degrading treatment or punishment

381. In connection with that issue, members of the Committee wished to know whether there had been any allegations that criminal convictions had been handed down on the basis of confessions obtained under duress and what the possible remedies would be in such cases; whether regulations had been adopted to abolish corporal punishment in all schools; and what measures had been taken to give effect to the right of everyone not to be subjected to medical or scientific experiment without his free consent. Clarification was also requested of the reservation made by the United Kingdom, on ratifying the Covenant, relating to the right to apply to persons lawfully detained in penal establishments of any kind such laws and procedures as it might deem necessary for the preservation of discipline; of provisions relating to the admissibility of confessions in Northern Ireland; and of the apparent discrepancy between article 3 of the Hong Kong Bill of Rights, which was identical to article 7 of the Covenant, and article 28 of the Basic Law.

382. In his reply, the representative of the State party said that while allegations of serious ill-treatment aimed at obtaining confessions had occasionally been made, they had been very rare in recent years. If the allegation was made in the course of a criminal trial, the matter was decided during the trial itself and, if upheld, such statements were not admitted as evidence. The Police and Criminal (Northern Ireland) Order contained extensive provisions relating to ordinary criminal offences and ensured that statements obtained under duress were not admissible and allowed the judge to rule on admissibility if there was any suggestion that evidence had been unfairly obtained. A wide-ranging programme of measures to prevent ill-treatment of suspects had been introduced in recent years, mostly under the Police and Criminal Evidence Act.

383. Responding to other questions, the representative explained that medical treatment without the consent of the patient was considered to be an assault under the law. Although corporal punishment had been abolished for all publicly funded schools and publicly funded pupils in independent schools, it remained legal for privately funded pupils at independent schools. Such a distinction was justified because the Government did not want to criminalize every form of chastisement of children. Excessive punishment of a child would be covered by the ordinary law on offences against the person.

Liberty and security of the person

384. With reference to that issue, members of the Committee requested clarification of the apparent discrepancy between the indication in the report that a detainee had to be brought before a magistrate's court and charged within 96 hours of his arrest and the statement that detention periods were subject to the sanction of the court after 36 hours. They inquired whether legislation similar to the Police and Criminal Evidence Act, 1984, had come into operation in Northern Ireland; whether *ex gratia* payments to persons who had been detained in custody resulted from an enforceable right to compensation, in the sense of article 9, paragraph 5, of the Covenant; and whether suspects systematically underwent a medical examination or could themselves request such examinations. Further information was also requested about the practice regarding periods recommended by the Home Secretary that life prisoners should serve; and on the provision in the Prevention of

Terrorism (Temporary Provision) Act of 1989 relating to the duty of the police officer reviewing the detention to consider the need to withhold the right of the detained person to have someone informed of his arrest and to see a solicitor.

385. In his reply, the representative of the State party said that the maximum period for which a person could be detained without charge in connection with a serious arrestable offence without charge was 36 hours and could be extended to 96 hours by a magistrate's court. There was no provision in United Kingdom law for an enforceable right to compensation in respect of arrest or detention that was lawful under domestic law but was inconsistent with article 9 of the Covenant. Any request of medical examination by suspects had to be acted on as soon as practicable, except in Northern Ireland terrorist cases, where the custody officer had some discretionary authority.

386. Sections 14 and 15 of the Northern Ireland (Emergency Provisions) Act 1987 gave detained persons the right to have access to legal advice and to have someone informed of their arrest. While the special circumstances of a particular case might dictate a temporary delay, both the maximum length of the delay and the circumstances in which the delay could be authorized were closely controlled. Such delay was justified in circumstances in which the provision of the information to the person whom the accused or suspected terrorist had asked to be informed might, in particular, lead to interference in the collection of information about terrorist acts, or make it more difficult to prevent an act of terrorism or to secure the apprehension of a person suspected of having committed an act of terrorism.

Treatment of prisoners and other detainees

387. With regard to that issue, members of the Committee wished to know whether the planned review of prison rules and standing orders in Northern Ireland had been completed and, if so, whether any of the changes adopted in the rest of the United Kingdom had been incorporated in such rules; whether offenders in Northern Ireland other than those accused of terrorist-type offences were eligible for parole and, if not, why they were denied benefits that were available in other parts of the United Kingdom; and whether there had been any studies regarding the extent to which the prison system guaranteed the realization of the aim of reformation and social rehabilitation, stipulated in article 10, paragraph 3, of the Covenant. In addition, further information was requested on the practice of secure accommodations; on the kind of behaviour that caused a child to be sent to such an accommodation and what role the parents had in the decision to commit a child to such an accommodation; on the number of children in secure accommodations and the relative proportions of convicted youngsters and others in the various security units; on the functions and activities of the Parole Board; and on proposals for further legislation, if any, regarding resort to community-based measures in lieu of prison terms for young adult offenders as well as for improving the operation of the parole system.

388. In his reply, the representative of the State party said that the review of prison rules and standing orders in Northern Ireland was currently in progress and would be the subject of a statutory order. The Criminal Justice Bill currently before Parliament contained a major programme of reform and provided a new framework for sentencing in England and Wales based on the

seriousness of the offence. Longer sentences were envisaged for violent and sexual crimes and greater scope was given to the possibility of punishment in the community through a combination of probation, community service and curfew orders. The Bill also incorporated a major reform of the parole system, providing for supervision in every case after a prisoner was released. It was, however, difficult to operate an effective parole system when a high proportion of offenders had committed terrorist crimes.

389. The criterion for placement of a child in secure accommodation was not the commission of a crime but the need to protect the child from injuring himself or others. The role of parents was strengthened considerably in the Children and Young Persons Act, which provided that parents had to be given their proper place in decision-making about their children at every stage. Efforts were made to ensure that the juvenile could be sent back to non-secure accommodations at the earliest opportunity. In prison establishments, as at 30 June 1990, there were 275 sentenced juveniles and 111 juveniles on remand. Legislative measures had successively reduced those numbers over the years and the juveniles were kept apart from adult offenders as much as possible.

Right to a fair trial

390. With regard to that issue, members of the Committee requested clarification of the statement in the report that in cases involving offences under the common law, there was no time-limit in Scotland within which the trial of the accused had to take place. They also wished to know whether there had been any applications for payment of compensation for a miscarriage of justice under section 133 of the Criminal Justice Act 1988 and, if so, with what results; whether the Government had reached any conclusions as to the amendments that should be made to the right of silence in England and Wales; whether the recommendations of the War Crimes Inquiry relating to the introduction of war crimes legislation had been implemented; what was the mandate of the Royal Commission of Criminal Justice; whether the decision of a person to remain silent in a judicial proceeding was considered tantamount to an admission of guilt; how the independence of the judiciary was guaranteed; whether the Government was considering any improvements in the regulations governing free legal aid; whether the right guaranteed under article 14 of the Covenant to have one's conviction and sentence reviewed by a higher tribunal was fully guaranteed in the United Kingdom; whether, in connection with a particular case involving a police officer, measures had been taken in Hong Kong to ensure that prosecution was not unreasonably delayed; how, in the light of articles 19 and 81 of the Hong Kong Basic Law, the judicial system in Hong Kong would be maintained after 1997; and what had led to the error in the Birmingham Six case and why it had not been discovered for six years. Clarification was also sought of the guarantees of equal access to evidence by the police and the defence, in particular in cases brought under terrorism legislation, and of provisions relating to the presumption of innocence and the reversal of the burden of initial proof in cases concerning "scheduled" offences.

391. In his reply, the representative of the State party explained that time-limits for the hearing of cases in Scotland did not apply to summary offences because, in the great majority of summary cases, people were likely to be either released on bail or simply awaiting a summons to court. Under section 133 of the Criminal Justice Act, 1988, eight applications for payment

of compensation for a miscarriage of justice had been approved by the Secretary of State. Following the report of the War Crimes Inquiry, a bill had been introduced to give the courts of the United Kingdom jurisdiction over the offences of murder or manslaughter committed as war crimes in Germany or German-occupied territory during the Second World War. The House of Commons had completed its second reading of the bill, which was to be debated further in the House of Lords.

392. The mandate of the Royal Commission on Criminal Justice was to examine the effectiveness of the criminal justice system in England and Wales and to consider, in particular, whether changes were needed in the conduct of police investigations and their supervision by senior police officers; the role of the prosecutor in supervising the gathering of evidence; the arrangements for the defence of accused persons; access to legal advice; the courts' duty in considering evidence; the arrangements for considering and investigating allegations of miscarriage of justice; and the possibility of amending the right of silence in England and Wales. Any changes in the criminal justice system in England and Wales were dependent on the outcome of the inquiry of the Royal Commission, which had been asked to complete its report within two years.

393. Replying to other questions, the representative said that the recommendations made some 10 years earlier by the Royal Commission on Criminal Procedure had led to the creation of the Crown Prosecution Service, which now handled all prosecutions in England and Wales. Access to legal aid was, in principle, available immediately after arrest, although in terrorist cases that access might be withheld for 48 hours. The question of the quality of legal aid was, however, a matter for debate, and a review of the question of eligibility with respect to legal aid was in progress. Appeals from the Crown Court might be made on any ground involving a question of law alone, but on any ground involving a question of fact or a mixture of law and fact, leave of the Court of Appeal was required. It was the opinion of the Government that those arrangements were consistent with its obligations under article 14, paragraph 5, of the Covenant.

394. Regarding the right of silence, there was a requirement that a formal warning be given by the police that anything said might be used as evidence; thus a suspect was clearly notified that he was not obliged to say anything. The provisions of the Police and Criminal Evidence (Northern Ireland) Order neither removed the right to silence nor reversed the burden of proof. The silence of the accused was no evidence in itself but could serve to corroborate other evidence in the case. Section 9 of the Northern Ireland (Emergency Provisions) Act provided that if a person had been charged with a particularly serious offence, such as possession of explosive substances, and the prosecution had proved that both the accused and the particular article were found together at the time of the offence, it was up to the defence to prove that the accused did not have the article in his possession.

395. As a result of the efforts of the Government, cases of police interference with statements had been discovered, brought to light and put back before the courts in order to secure the necessary redress for those concerned. Despite the existence of those very well-publicized and important cases that gave rise to concern, the vast majority of criminal cases were dealt with in an entirely satisfactory manner. Referring to questions raised

regarding Hong Kong, the representative said that the Joint Declaration provided for the establishment of a new Court of Final Appeal after 1997 and that the long delay in resolving the case of an auxiliary policeman was unrepresentative of what usually happened in civil cases.

Freedom of movement and expulsion of aliens

396. With reference to that issue, members of the Committee wished to know what the difference between expulsion and exclusion was. Clarification was also requested of the system of "supervised departure"; of the "key people" category permitted to register as British citizens under the British Nationality (Hong Kong) Act; of the situation of Vietnamese refugees in Hong Kong; and of the compatibility with article 14, paragraphs 3 (b), (d) and (f), of the Covenant on the screening and detention procedures for such asylum seekers.

397. In his reply, the representative of the State party said that the "exclusion" power was directed towards ensuring that where grounds for suspicion of involvement in terrorist offences existed, the suspected person might be excluded from the country, subject to the provisions concerning citizenship and residence. Under the system of supervised departure, a person who was in the country unlawfully could, at the authorities' discretion, leave voluntarily as an alternative to being deported. Anyone who left under such system enjoyed the same status as anyone applying to enter the country.

398. Persons who could apply to be registered as British citizens under the British Nationality (Hong Kong) Act would be determined according to a scheme approved by the British Parliament. The question of Vietnamese boat people had posed critical problems for Hong Kong, and the Territory had made a genuine effort to deal fairly with them. It had, however, to be noted that articles 13 and 14 of the Covenant related to those lawfully present in the territory of the State party, which was not the case of the boat people in Hong Kong. However, the Territory continued to deal with the problem in a humane way pending a satisfactory international solution. Criteria for screening and detention procedures had been reviewed with the Office of the United Nations High Commissioner for Refugees and were subject to its scrutiny at all stages of the process. Furthermore, several asylum seekers had had recourse to the courts, had been provided with legal aid and had been successful in pursuing their claims.

Right to privacy

399. In connection with that issue, members of the Committee wished to receive information on the effectiveness to date of the measures that had been introduced under the Data Protection Act, 1984, to safeguard the privacy of data subjects and wished to know whether the Act was applicable to all dependent territories. In addition, information was requested on the mandate of the security forces under the Security Services Act and concerning the law and practice relating to permissible interference with the right to privacy in Hong Kong. In the latter regard, it was asked what the legal regime was governing lawful interference with telephone and telegraphic communications in Hong Kong and whether such practices were monitored by independent bodies.

400. In his reply, the representative of the State party said that the Data Protection Act, 1984, had been generally successful in accomplishing its purpose. Although the Act did not apply in the dependent territories, information there was protected by rules of confidentiality, and any breach of that confidentiality would be dealt with appropriately. The Security Services Act represented the first statutory text covering the secret service and contained new safeguards and specified remedies. Complaints by organizations that were the target of investigations could be reviewed by a commissioner appointed under the Prevention of Terrorism (Temporary Provisions) Act. Interference with telephone communications in Hong Kong could be authorized under the Telecommunications Ordinance in the public interest and on the specific approval of the Governor if there was a risk to security.

Freedom of religion; prohibition of propaganda for war and incitement to national, racial or religious hatred and freedom of association

401. With reference to that issue, members of the Committee wished to know whether there had been any evolution in the Government's position since the submission of the report in respect of the desirability of legislation relating to blasphemy, blasphemous libel and the right to seek information; whether the 1989 Official Secrets Act encompassed defence of the public good and whether this Act applied also to the dependent territories; what had been the effects of the Broadcasting Ban of 1988 and what was the outcome of the judicial review referred to in the report; what had been the impact of the 1989 Broadcasting Bill on freedom of expression; what was the role of the new Radio Authority; what was the status of the proposal to replace the Press Council with a Press Complaints Commission and what the latter's competence would be; and whether there were any legal criteria for determining that an organization should be proscribed under section 1 of the Terrorism Act of 1989.

402. In addition, it was inquired whether the Government intended to further amend the Summary Offences Ordinance and the Education Ordinance in the interest of greater freedom of expression; whether the United Kingdom had specified remedies in order to comply with the recent judgement of the European Court of Human Rights concerning restrictions on the publication of material about trials in progress; what the maximum punishment for membership of a proscribed organization was and whether mere membership in the organization, in the absence of any other illegal activity, was in itself an offence; why the scope of blasphemy laws in the United Kingdom extended only to Christianity; whether the distinction between the Church of England and other churches was objective and reasonable; and what obstacles existed to a total separation of Church and State. Clarification was also sought of the provisions of the Cable and Broadcasting Act 1984, under which the independence of radio and television could be restricted in the interest of maintaining political impartiality and, with respect to Hong Kong, of provisions of the Noise Control Ordinance and the Public Order Ordinance, which seemed to legitimize restrictions to the right to peaceful assembly as set forth in article 21 of the Covenant; of the nature of the controls applied when public gatherings exceeded 200 persons; and of article 23 of the Basic Law of the Hong Kong Special Administrative Region, which stated that laws would be enacted to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

403. In his reply, the representative of the State party explained that although the Government was aware that the current legal situation with regard to blasphemy was unsatisfactory, it did not believe that the necessary consensus existed to change it. Furthermore, the fact that the law did not apply to all religions did not contravene article 18 of the Covenant. The Official Secrets Act did not make provision for a "public good" defence but was concerned with matters involving "serious harm to the interests of the country". It had not yet been extended to the dependent territories. The Government believed that the Broadcasting Ban had been highly effective and that the deregulation of broadcasting under the 1989 Broadcasting Bill would lead to greater freedom of expression. The intent of the Cable and Broadcasting Act was to establish independent radio and television commissions and to guard against fomenting terrorism through publicity. The role of the new Radio Authority was to license and regulate broadcasting, and the Press Complaints Commission had been established by the press itself in response to widespread complaints about the press. A case concerning restrictions on press coverage of court proceedings was before the European Court of Human Rights. Such restrictions were carefully designed to strike a balance between freedom of expression and the proper administration of justice.

404. Decisions to proscribe organizations were subject to full parliamentary controls. Under the Prevention of Terrorism (Temporary Provisions) Act, 1989, the maximum penalty for membership in a proscribed organization was imprisonment not exceeding 10 years, and mere membership in such organization was considered an offence. However, in cases where a person had been a member of an organization before it had been proscribed, and where that person had not taken an active role in the organization after its proscription, there was a defence to the offence of membership. Very few organizations had been proscribed under the legislation and those that were, were proscribed because of their involvement in terrorism. There were no plans to introduce changes in the privileges enjoyed by the Church of England, which, in the view of the Government, were reasonable.

405. With regard to prohibitions of public meetings in Hong Kong, meetings involving more than the numbers [illegible] people specified in the Public Order Ordinance required the permission of the Commissioner of Police, such permission having been withheld on six occasions in 1989 and 1990.

Right to participate in the conduct of public affairs

406. With regard to that issue, members of the Committee wished to receive information on the Government's plans, if any, for affirmative action to promote greater opportunities for the employment of members of ethnic minorities and women in the judiciary, Parliament and local government and the higher grades of the civil service. They also wished to know what the legal basis was for the "positive vetting" of certain candidates for the civil service; how the condition of susceptibility to pressure from certain organizations or groups had been interpreted in practice; whether there was a remedy for the unsuccessful candidate; and whether consideration had been given to changing the simple majority procedure in the British electoral system. Clarification was also sought of restrictions to electoral campaign expenditures under British election law and of the apparent contradiction between prohibiting members of political parties from holding civil service posts while allowing members of the civil service to enter politics.

407. In his reply, the representative of the State party explained that the Employment Act of 1989 had made it possible for employers to offer training to members of particular ethnic groups, and that positive action had also been taken within the civil service in favour of women and members of ethnic minorities. The Bar Council had recently taken positive action to help barristers belonging to ethnic minorities to develop the requisite experience. Anyone who felt unfairly treated under the revised procedures for "vetting" of certain candidates for the civil service could bring the matter to an independent tribunal or the permanent head of the department concerned. Although under the electoral system currently used in the United Kingdom the number of members of Parliament did not directly reflect the number of votes cast, it was considered that a system of proportional representation could give minority parties a disproportionate influence in Parliament. Civil servants were free to enter local governments and national politics.

Rights of persons belonging to minorities

408. With reference to that issue, members of the Committee wished to receive a list of groups and their approximate membership of ethnic minorities who, according to the report, "regarded themselves as such".

409. In his reply, the representative of the State party referred to detailed figures on ethnic minorities provided in the report (CCPR/C/58/Add.12).

Concluding observations

410. Members of the Committee expressed their thanks to the representatives of the State party for their cooperation in presenting the third periodic report of the United Kingdom of Great Britain and Northern Ireland and for having engaged in a fruitful and constructive dialogue with the Committee. It was clear that progress had been made in the area of safeguarding human rights since the submission of the second periodic report. Positive developments in the United Kingdom in such areas as criminal justice, prison conditions and family law reform had, for instance, been reported, and the review of matters relating to evidence and jurisdiction by the Royal Commission was particularly welcomed.

411. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been fully allayed. With respect to Northern Ireland, concern was expressed over the excessive powers enjoyed by police under anti-terrorism laws; about the liberal rules regarding the use of firearms by the police; and about the many emergency measures and their prolonged application. In that regard, it was noted that some of the procedures followed with respect to the application of conditional release and the admissibility of evidence should have been the subject of an express derogation under article 4 of the Covenant. Other areas of concern included provisions relating to legal aid, which seemed excessively restricted; asylum seekers and discrimination in the application of immigration laws; the right of appeal under article 14 of the Covenant, which was not sufficiently guaranteed under the United Kingdom's criminal justice system; the legislation on blasphemy; restrictions on freedom of information under the Broadcasting Act; and the exercise of censorship through court injunctions that prevented the publication or broadcasting of information. The hope was also expressed that the Government would review its reservations with respect to the Covenant

and give renewed consideration to accession to the Optional Protocol and the enactment of a bill of rights.

412. With regard to the specific situation of Hong Kong, it was emphasized that the legal system should be in a position to guarantee full respect for human rights by 1997. It was noted in that connection that the Joint Declaration and the Basic Law represented important steps towards addressing human rights issues in Hong Kong. However, the Hong Kong Bill of Rights was not yet law, the Letters Patents had not yet been amended and the Law Reform Commission was still considering laws regarding privacy, illegitimacy, police powers and other matters. Measures also had to be taken to coordinate and harmonize the contents of articles 25 to 37 of the Basic Law, article 39 of the Basic Law, which provided for the applicability of the Covenant, and the Hong Kong Bill of Rights. The necessity of continued implementation of the reporting mechanisms provided for in the Covenant after 1997 was also reiterated.

413. The representative of the State party thanked the members of the Committee for the dialogue they had established with the delegation and assured them that his Government placed great importance on the consideration of its reports by the Committee and would be duly notified of the Committee's concerns and comments. He drew the Committee's attention to the fact that the Basic Law of the Hong Kong Special Administrative Region had been drawn up by the People's Republic of China, and that the delegation therefore had not been in a position to give authoritative interpretations of individual provisions of that text.

414. In concluding the consideration of the third periodic report of the United Kingdom of Great Britain and Northern Ireland, the Chairman also expressed satisfaction at the outcome of the dialogue with the State party's representatives. The Committee's observations on the situation in the United Kingdom and its dependent territories had focused on Northern Ireland and Hong Kong. In that respect, he welcomed the United Kingdom's recent decision to conduct negotiations in order to reach a solution in Northern Ireland that would provide full protection for human rights. The United Kingdom also had a responsibility to hand over the territory of Hong Kong to China under conditions that would prevent any erosion of the current standard of protection for human rights. Furthermore, it was clear that China had entered into international legal obligations in respect of Hong Kong and that the Joint Declaration and the Basic Law encompassed the implementation of all the provisions of the Covenant, including those which were of a procedural nature.

Panama

415. The Committee considered the second periodic report of Panama (CCPR/C/42/Add.7 and 11) at its 1051st to 1054th meetings, held on 4 and 5 April 1991 (see CCPR/C/SR.1051-1054).

416. The report was introduced by the representative of the State party, who observed that on 20 December 1989 a democratically elected Government had taken power from the military dictatorship that had ruled since 1968. The current Government had the political will to promote human rights and had taken steps to improve the human rights situation in Panama, although most of the people in Panama were somewhat ignorant of the international system for the protection of human rights.

Constitutional and legal framework within which the Covenant is implemented

417. With regard to that issue, members of the Committee wished to know what the status of the Covenant was relative to Panamanian domestic legislation; how conflict between a provision of the Covenant and domestic law would be resolved; whether a subsequent law could suspend the Covenant; whether provisions of the Covenant could be invoked directly before the administrative authorities and courts; whether there had been any instances where this had actually been done and, if so, with what results; whether the removal, pursuant to Act No. 33 of 1974, of one of the generic remedies applicable in administrative matters had in fact been advantageous to individuals; and what activities relating to the promotion of greater awareness on the part of the relevant administrative authorities as well as the public at large of the provisions of the Covenant and the Optional Protocol had been undertaken.

418. In addition, members of the Committee wished to know whether a specific legal provision had been adopted to incorporate the Covenant into Panamanian law; whether the Government would consider seeking a declaratory judgement on the status of the Covenant from the Supreme Court; and why individual Panamanians did not invoke the Covenant and submit communications to the Committee. Further information was sought regarding the ongoing process of constitutional reform, particularly with regard to the abolition of the army, the establishment of a police force responsible for national security, and changes in the judiciary. Members of the Committee also wished to have information on the legal situation prevalent in Panama as a result of the invasion, including the measures adopted to guarantee to citizens the rights set forth in the Covenant, especially in view of the presence of foreign troops that exercised internal control with the consent of the Government; on the legal basis of confiscation, without legal process, of property belonging to alleged collaborators with the former regime; on any steps proposed to compensate victims in various areas of Panama City and Colón whose homes and workplaces had been destroyed by bombing; and on the recent actions taken to investigate cases of disappearances and deaths.

419. With regard to remedies, members of the Committee wished to know how *amparo* operated; how often the right of *amparo* had been exercised by individuals; what the relationship was between *habeas corpus* and *amparo* and whether a detainee could in fact seek relief through both measures; what safeguards were offered to individuals under the Administrative Code; whether the right of appeal against a decision of the administrative court still

existed; and to what extent individuals, especially poor people, had access to the courts and to legal assistance. They also asked what the Government's policy was with regard to the treatment of those who had been associated with the past repression and whether the Government of Panama would indeed have full sovereignty over the Panama Canal by the year 2000.

420. In his reply, the representative said that the Covenant had constitutional status and that no subsequent law could derogate from it. The Covenant could be invoked directly before the administrative authorities and courts in Panama, which had been done particularly during the last three or four years of the dictatorship. Many habeas corpus actions had invoked the Covenant as well as domestic legislation, but the Supreme Court had never in its rulings taken into account the provisions of the Covenant. Reforms under Act No. 33 of 1974 had been beneficial to individuals since it had speeded up administrative procedures and provided new administrative remedies. Act No. 2 of 1984 had established mandatory teaching of human rights in all schools, but had never been put into effect. However, the Ministry of Education was now working, with the assistance of non-governmental organizations, to promote the teaching of human rights at all levels of education. The Government had also requested technical assistance and advice from the United Nations Centre for Human Rights, especially with regard to the administration of justice in Panama.

421. Replying to other questions, the representative stated that his Government's chief concern was for the consolidation of democracy. That required a reconciliation of the conflicting elements within the country and was reflected in the manner in which former officials were being prosecuted. Many people had been detained by United States forces and subsequently turned over to the Government, and those against whom there were no charges had been released. Those still under detention had been charged with offences, were not ill-treated and were represented by legal counsel. There was a great ignorance of penal law in the country because the law had fallen into neglect. As a consequence of the reorganization of the judiciary and the Prosecutor's Office, 40,000 criminal cases had been turned over to the courts. Provisions for access to free legal aid had been made in legislation enacted in 1983, but practical arrangements still had to be worked out. Access to the courts and to legal assistance, especially by the poorest members of society, was a complicated problem linked to the legacy of military dictatorship. The Government had recently introduced a new Legal Code and had begun working on regulations to ensure the independence of the judiciary. Habeas corpus and amparo were both intended as guarantees of human rights, but the former was the specific remedy guaranteeing individual freedom and the only one for which detained persons could apply. The Government had proposed to abolish the 1974 law establishing an office to investigate administrative errors and was working on a series of regulations to ensure proper conduct by the police, especially in the use of firearms. The provisions of the Panama Canal Treaty would be respected and complied with.

Right of self-determination

422. In connection with that issue, members of the Committee asked whether any measures had been taken to prevent public and private support for the apartheid regime of South Africa; what was Panama's position with regard to the rights of the Palestinian people; and whether the policy outlined in

paragraphs 11 and 12 of the report still applied. They also wished to know whether the Government regarded self-determination in its domestic dimensions as requiring a continuing system of parliamentary rule; what was the position of Panama on the principle of non-interference; when the next national elections were due; and what measures were envisaged to ensure that in those elections there was a proper choice between political parties.

423. In reply, the representative said that diplomatic relations with South Africa had been suspended in 1985 and that the Government was considering the imposition of measures to punish violations of economic sanctions against South Africa, including measures against Panamanian-registered ships. Panama maintained diplomatic relations both with Arab States and with Israel. Its position on their conflict was that Israel should withdraw from the occupied territories and that there should be a recognition of and security for Israel as part of an overall Middle East peace settlement. Answering other questions, the representative stated that the Government had a binding rule that precluded recognition of any Government that came into power as a result of a military coup or through electoral fraud. The next national elections were due to be held in May 1994, and a new electoral code would be needed to ensure that they would be democratic.

State of emergency

424. With reference to the state of emergency, members of the Committee wished to know whether there had been any proclamation of a state of emergency since the consideration of the initial report in 1984 and, if so, what rights had been suspended; whether the Secretary-General of the United Nations had received a formal notification of the states of emergency proclaimed; whether any decree had been enacted suspending constitutional rights during and after the invasion by United States forces; whether the guarantee against confiscation of property was among the constitutional guarantees that could be suspended; whether any persons had been deprived of their property since the last report; and what was the meaning of Decree No. 50 of February 1990, which repealed the article placing restrictions on the judicial remedy of *amparo*.

425. In reply, the representative stated that states of emergency had been declared in 1987 and 1988; on both occasions the Government had suspended all guarantees subject to suspension under the Constitution and had notified the Secretary-General. The guarantee of private property acquired in accordance with the law could be suspended, whereas the guarantee against confiscation of property could not be suspended in a state of emergency. Formerly, the Judicial Code had prohibited the exercise of the remedy of *amparo* against decisions by judicial officials, but Decree No. 50 of February 1990 now made this possible. The Government considered that the suspension of constitutional guarantees after the invasion by the United States would have increased the danger of human rights violations.

Non-discrimination and equality of the sexes

426. With reference to that issue, members of the Committee wished to be provided with information concerning measures taken, since the consideration of the initial report, to improve the status of women, particularly in rural areas. It was also asked in which respects, other than in the exercise of

political rights, the rights of aliens were restricted as compared to those of citizens.

427. Members of the Committee wished to know what types of post were not open to women; what obstacles stood in the way of women's advancement; what resources had been made available for the programme of affirmative action on behalf of women; what was the current situation of aliens, in particular those of Chinese origin, and what had been done for aliens who had suffered discrimination and ill-treatment; whether the special status accorded to Christianity did not in fact constitute discrimination against other religions; what was the rationale behind the different conditions for divorce applicable to men and women; whether women enjoyed equal participation in respect of the disposal of conjugal property; why Panamanians who were citizens by birth enjoyed a higher status than those who were not; and what was the position of persons seeking asylum in embassies in Panama, particularly military personnel accused of serious offences.

428. In reply to questions posed by members of the Committee, the representative explained that the Ministry of Agricultural Development was establishing women's organizations in rural areas that were financially supported by a national organization for rural development. In promoting the advancement of women, the Government encountered economic and cultural obstacles; the latter, in particular, would not easily be overcome. Aliens did not have political rights and were subject to special conditions in the exercise of certain activities. Certain public service posts were reserved for Panamanian nationals and although any person was free to exercise any profession or trade, subject to the relevant regulations, only Panamanian nationals were entitled to practise law and retail trading.

429. In reply to other questions, the representative pointed out that earlier reports had concentrated on legislation and constitutional guarantees and had failed to give a true picture of the real situation regarding human rights in Panama. For example, the allocation of resources to social programmes had been hampered by extravagant military spending. No restrictions were placed on the profession of religions other than the Roman Catholic faith and they also enjoyed full status in law. The legal grounds for divorce had been amended and the Civil Code now placed men and women on an equal footing before the law in that regard. Men and women also enjoyed equal rights with regard to matrimonial property and inheritance. The only difference between citizens who were Panamanian by birth and those who were naturalized was that the President of the Republic, judges of the Supreme Court, the Attorney-General and the Comptroller General had to be Panamanians by birth. Panama recognized the right to asylum and believed that a solution to current problems might be found in the use of machinery established under the Charter of the Organization of American States. Large sums of money had been illegally disbursed to Chinese nationals, and a Commission had been established to investigate the problem.

Right to life

430. With regard to that issue, members of the Committee wished to know whether there had been any complaints concerning alleged disappearances or killings caused by the police or the security forces or undertaken with their support and, if so, whether such allegations had been investigated by the

authorities before, during and after the invasion and with what result; what cooperation the Government had given in order to open the common graves allegedly found in various places and to compensate the victims' relatives; what the rules and regulations were governing the use of firearms by the police and security forces; whether there had been any violations of those rules and regulations and, if so, what measures had been taken to prevent their recurrence; what steps had been taken to expand public health facilities and health care, particularly in rural areas; what was the current rate of infant mortality and what measures had been taken to reduce that rate; and what had been done by the Panamanian Government to prevent the spread of HIV/AIDS.

431. Members of the Committee also wished to know what the number of casualties was resulting from the 1987 riots and the events of December 1989; whether excessive use of force by members of the police, army or invading troops in those cases had been investigated; whether the offenders could be held criminally liable under local criminal jurisdiction; whether a special office had been set up to handle questions from the family members of persons who had died in December 1989; what regulations governed police conduct and whether they were in conformity with the United Nations Code of Conduct for Law Enforcement Officials; whether Panama had independent machinery for investigating the use of excessive force by police officers; and whether the Panamanian situation had ever been reviewed by the Working Group on Enforced or Involuntary Disappearances or the Special Rapporteur on Summary Executions. In addition, it was asked when Panamanian abortion laws considered life to begin; what was the environmental policy of Panama; whether Panama had a drug problem and what steps had been taken to discourage drug trafficking; whether any measures had been taken to control the spread of HIV infection by prostitutes; and whether the Government was seeking to create jobs for the poverty-stricken sectors of Panamanian society.

432. In reply to questions posed by members of the Committee, the representative said that cases of disappearances and killings involving members of the armed forces had been investigated and it had been proposed to establish a special prosecutor's office to investigate such cases. It was hoped that new regulations relating to the use of weapons by police and security forces would soon be introduced. Most endemic tropical diseases and infectious parasitic diseases had been brought under control. The infant mortality rate stood at 26 per 1,000 live births. Measures to prevent the spread of AIDS focused on a public information campaign, including publicity about the use of condoms. A special problem relating to drugs was that Panama served as a transit point between North and South America. The financial reserves of the public health system had been depleted and the Government was taking steps to restore the health insurance system.

433. Responding to other questions, the representative said that the Office of the Attorney-General had responsibility for investigating deaths and disappearances and other human rights violations that had occurred over the past 21 years. The actual number of deaths and disappearances seemed, in reality, to be rather low. Over 60 per cent of young people in Panama used drugs. The Government was taking action on a range of drug-related problems and was achieving progress. Abortion was an offence under the Criminal Code punishable by imprisonment. Both the women involved and those performing abortions were frequently punished. Prostitutes were required to undergo medical examinations every three months.

Treatment of prisoners and other detainees

434. With reference to that issue, members of the Committee asked what controls had been instituted to ensure that persons arrested or detained were not subjected to torture or to cruel, inhuman or degrading treatment and what arrangements existed for the supervision of places of detention by the Department of Correction or the Office of the Attorney-General; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with; whether those provisions had been made known to the police, armed forces, prison personnel and other persons responsible for holding interrogations; whether the relevant regulations and directives were known and accessible to prisoners; whether the Government had taken steps to ensure that the police would now treat prisoners differently; whether any prison deaths had been due to shortages of food and medical attention; and whether there was any problem of overcrowding in prisons, and, if so, what measures were being taken in response.

435. In his reply, the representative said that torture had been almost the exclusive preserve of the military authorities. The Government had begun a series of seminars and courses to improve the treatment of prisoners held in penal institutions, in addition to ending control of prison establishments by the military. Copies of the United Nations Standard Minimum Rules had been provided to the relevant officials and the Government had sought from the outset to ensure that judicial officials, members of the Public Prosecutor's Office, the police and all prison personnel were familiar with them. However, much remained to be done and the Government hoped to carry out training seminars on the subject. Detainees were sometimes interviewed by the press, and now that they were aware of their rights, prisoners were attempting to stage prison uprisings or demanding better conditions.

Liberty and security of the person

436. In connection with that issue, members of the Committee wished to know whether the planned legislative amendments with regard to administratively imposed compulsory labour had been enacted; whether the Committee's concerns regarding the apparent incompatibility of article 33 of the Constitution with article 9 (1) of the Covenant had been taken into consideration by the Panamanian authorities; what were the reasons for detention in non-criminal cases; what the maximum period was of remand in custody and detention pending trial; how quickly after arrest a person's family was informed and how soon after arrest a person could contact a lawyer; whether the conditions of payment of damages envisaged in article 129 of the Penal Code were deemed compatible with article 9 (5) of the Covenant; and whether there had been any cases where the State had been required to pay civil damages to detainees. Members of the Committee also wished to know about the situation of reported asylum seekers in various diplomatic missions, and what the Government's grounds were for not granting safe conduct pursuant to the Inter-American Convention on Asylum.

437. Replying to questions put forward by members of the Committee, the representative noted that the Administrative Code related only to minor offences for which the term of imprisonment was one year or less. Since such sentences were no longer being applied, that Code had fallen into disuse. ILO Convention No. 29 (Forced Labour), to which Panama was a party, excluded work

or service performed pursuant to a sentence handed down as part of the judicial process. Regarding the possible incompatibility of article 33 of the Constitution with article 9 (1) of the Covenant, the situations envisaged were very specific and applied only to exceptional circumstances. He could recall no cases where those constitutional and subsidiary legal norms had been enforced. During the past 14 months no one had been detained for reasons other than crimes, except for those detained under Act No. 112 for administrative infractions, but that Act would probably be repealed shortly. No distinction was made between remand in custody and detention pending trial. Pre-trial detention applied only to offences carrying prison sentences and could last throughout the investigation and trial process. Detention in other cases would normally last between two and four months, but in view of the large number of cases and the shortage of resources, the judicial process was often not completed within that period. The Government had enacted a law aimed at relieving prison overcrowding and dealing with the long periods of detention by providing alternatives to incarceration. All persons placed under arrest now had the right to legal counsel in all police and judicial proceedings and could be visited by family members from the moment of arrest. The Penal Code required the State to pay civil damages where the defendant succeeded in obtaining the general dismissal of proceedings after having undergone more than one year of pre-trial detention. The State incurred civil responsibility only when a special agent had been involved, but prosecutors, judges or other officials unlawfully detaining an individual were not considered to be special agents.

Right to a fair trial

438. With regard to that issue, members of the Committee asked for a clarification of article 43 of the Constitution allowing for laws to have retroactive effect, *inter alia*, for reasons of "public order or social interest". They also wished to know what were the terms of Cabinet Decree No. 17 of 24 January 1990 reforming and repealing provisions suspending the legal profession; what measures had been taken to safeguard the independence of the judiciary and the Public Prosecutor's Office and how extensive the reforms affecting the criminal investigation department and the Public Prosecutor's Office were; what developments had occurred with regard to the bill dealing with reform of the prison system; how effective constitutional and legal guarantees were in respect of the independence of magistrates and judges in the exercise of their functions; and how the Bar was organized and functioned.

439. In addition, members of the Committee wished to know why article 9 (5) of the Covenant could not be invoked directly in cases not covered by article 129 of the Penal Code or precluded by other legislation and whether that article had ever been invoked in fact and, if so, with what result; what were the consequences of the Supreme Court's declaring a law unconstitutional; what types of provisions could be repealed and replaced by the Supreme Court; whether the judgements of the Supreme Court and its Chambers could be challenged through a writ of unconstitutionality; what were the conditions prescribed by law relating to the discharge or suspension of magistrates and judges and were they of such nature as to remove any reluctance by judges to act independently; what steps were envisaged to strengthen the independence of the judiciary; how many political prisoners were currently being held; whether the decree governing demonstrations could be repealed on grounds of

incompatibility with the Covenant; what were the possibilities for political exiles to return to Panama, and under what conditions were drug addicts or the mentally ill detained.

440. The representative of the State party stated in his reply relating to the retroactivity of laws that the phrase in the Constitution concerning "public order and social interest" had led to abuses in the past, and it was hoped that in any future reform of the Constitution there would be an opportunity to remove those words. A set of draft rules was expected to be adopted by the Judicial Council by the end of the year relating to requirements for admission to the judicial profession. Under the previous regime, judicial appointments had been made without regard to such requirements. The criminal investigation department had been reorganized as the judicial police department with essentially the same mandate. The Legislative Assembly was expected to adopt a law making that department accountable only to the Public Prosecutor's Office and the judiciary and no longer to the executive branch. The process of weeding out many undesirable members of the criminal investigation department was continuing. The reforms carried out in the Public Prosecutor's Office were in their final phase, with the dismissal of certain prosecutors on the basis of incriminating information and the appointment of their replacements. A bill dealing with the prison system had been drafted and was currently being considered by the legislative branch. There was a chapter of the Bar in each of the country's nine provinces. Membership of the Bar consisted of about 3,500 practising lawyers, and it had recently been a critical factor in the development of new legislation.

441. Replying to additional questions posed by members of the Committee, the representative explained that it was difficult at the present time to establish the legal ranking of the Covenant vis-à-vis the Constitution because of the division of opinion between internationalists and constitutionalists. The forthcoming constitutional reform would not help to solve that problem, as it would focus on the elimination of militarism. There were no persons imprisoned for their political views in Panama and no exiles, as no one had been expelled. Act No. 112 of 1974 had not yet been repealed. Court judgements were not open to writs of unconstitutionality but were subject to amparo. Rulings of unconstitutionality repealed specific laws but did not restore pre-existing situations. Insane persons or those under the influence of drugs could be detained in order to safeguard their lives or health.

Freedom of movement and expulsion of aliens

442. In connection with that issue, members of the Committee wished to know what was the distinction between expulsion and deportation; whether an appeal against an expulsion order had suspensive effect; whether the denial of the possibility of appeal from expulsion orders issued for reasons of health and public policy was compatible with article 13 of the Covenant; which illnesses could constitute grounds for the expulsion of aliens for reasons of health; and whether the Government could arbitrarily decide to resort to expulsion rather than deportation.

443. In reply, the representative said that expulsion orders were used where foreigners who had met the requirements for entry into the country were found to be undesirable on various grounds, including that of national security. Deportation orders applied where aliens had not complied with the requisite

legal formalities for entry or had stayed beyond the period permitted by their visas. Applications for review of an expulsion order could be made to the authority issuing the order, and appeals could be made to a higher authority. Both applications had suspensive effect, and the remedy of *habeas corpus* was also available. Expulsions on the grounds of public health were rare and the remedy of *amparo* was available.

Right to privacy

444. Concerning that issue, members of the Committee wished to know whether the tapping of private telephone lines had been prompted by security considerations.

445. In reply, the representative said that the police could be authorized to carry out wire-tapping operations in criminal investigations.

Freedom of religion and expression; prohibition of propaganda for war and of incitement to national, racial or religious hatred

446. In connection with those issues, members of the Committee wished to know what procedures existed for legal recognition and authorization of various religious denominations; whether article 25 of the Constitution, which provided for freedom of worship subject to respect for Christian morality and public order, affected such recognition, especially as regards non-Christian religions; in what respect, if any, the Roman Catholic Church enjoyed privileged treatment as compared with other churches or religious groups; what was the practice in respect of censorship in Panama; how effective legal guarantees were relating to freedom of expression, particularly political dissent; what had been the outcome of studies undertaken by the National Advisory Commission to review regulations governing the mass media; whether any regulations had been adopted on the basis of the Commission's report; and whether State funding was ever withheld from universities in order to secure the employment or dismissal of certain persons.

447. In reply, the representative said that the legislation on freedom of expression was currently under review and that those media that had been closed down or confiscated had been reopened and restored to their rightful owners. It was not necessary to be a member of the National College of Journalists in order to exercise the profession of journalism, which was open to all. The bill that was to be submitted to the Assembly, on the basis of the conclusions of the National Advisory Commission established to review the regulations governing the mass media, had already been subject to a wide-ranging national debate.

Freedom of assembly and association

448. With regard to that issue, members of the Committee requested information concerning the law and practice relating to the establishment and functioning of political parties and trade unions; on any relevant restrictions; and on the law and practice relating to the State's involvement in financing political parties pursuant to article 135 of the Constitution. They also wished to know whether any political parties had been banned since the consideration of the initial report and how equality of treatment of the various political parties was ensured. In addition, members wished to know

whether the boundaries of electoral districts were drawn in a manner that ensured equitable representation of different political parties in the Government; how the requirement to vote was enforced; whether the Government operated under a policy of openness; whether government workers who had participated in a demonstration in December 1990 had been dismissed by virtue of Law No. 25 of 1990; whether any conclusions had been reached in the review of the constitutionality of that law; and whether there were any possibilities that exceptions to the right to strike would be eliminated. Furthermore, observing that the banning of peaceful demonstrations as well as the sanctions imposed on their participants might violate the rights guaranteed under the Covenant, members wished to know whether orders expelling persons who dissented from the Government from public or trade union office were going to be lifted.

449. In reply, the representative said that in order to be recognized as a political party, a grouping had to have a minimum support base of some 3.5 per cent of the electorate and a democratic internal structure, with decisions taken by vote. No political parties had been banned since the consideration of the initial report, and six political parties currently met the legal requirements to be recognized as such. Trade union rights applied to private enterprises but not to public sector organizations. Owing to the transfer of private enterprises to the public sector, an anomalous situation had arisen since the Government had allowed the trade unions in those enterprises to remain in existence. The financing of political parties was governed by article 135 of the Constitution, which had remained without effect as a result of failure to agree on provisions to translate it into practice. The electoral system comprised elements of district and proportional representation. The Constitution recognized the right to strike, except that the law could impose restrictions in the case of public service employees. There was no general policy of dismissing public employees from their posts for participating in political activities that criticized the Government; the matter was a constitutional issue.

Protection of the family and children

450. With reference to that issue, members of the Committee asked whether the draft Family Code had been enacted and what were its main provisions. They sought information on the activities and accomplishments of the Authority for the Child and the Family; on practical measures taken to enhance the enjoyment by women of their equal rights during marriage; and on any plans to remove the discriminatory provisions in respect of divorce contained in the Civil Codes. Members also wished to know whether Panamanian law provided safeguards against child abuse and why the State did not make allowances to large families.

451. Answering questions posed by members of the Committee, the representative said that the draft Family Code was under review and the Social Welfare Department of the Ministry of Labour was devising an ambitious plan in various spheres of concern to the child and the family. Discrimination on the basis of sex was unconstitutional, but many cultural problems still subsisted. In that connection, an education campaign was being formulated to make women more aware of their legal rights. All discriminatory provisions in respect of divorce had been abolished, and recent legislation also gave women the right to keep their own surnames upon marriage.

Concluding observations

452. Members of the Committee welcomed the objectivity and frankness shown by the Panamanian delegation and recognized the problems associated with the transition to democracy after a long period of dictatorship. The report had not been prepared according to the Committee's guidelines and was incomplete. Members were of the view that special efforts should be directed at repealing discriminatory legislation and expediting judicial proceedings against persons held in custody. Serious concerns were also expressed with regard to the expulsion procedure, the infant mortality rate, the age for marriage, restraints on trade and the exercise of professions by aliens, unionization, the dissemination of the Covenant and the treatment of Chinese nationals.

453. In concluding the consideration of the second periodic report of Panama, the Chairman thanked the delegation for its contribution to the constructive dialogue. The Panamanian delegation's presentation had to some extent compensated for the inadequacy of the report, and it was hoped that the State party's third periodic report would be in conformity with the Committee's guidelines.

Sri Lanka

454. The Committee considered the second periodic report of Sri Lanka (CCPR/C/42/Add.9) at its 1057th to 1060th meetings, held on 9 and 10 April 1991 (see CCPR/C/SR.1057-1060).

455. The report was introduced by the representative of the State party, who said that the Constitution of 1978 had been reviewed and that proposed amendments to the Constitution, on which the members of the Committee were invited to comment, were currently under discussion in Parliament. Sri Lanka was plagued by terrorist activities carried out by separatists in the northern and eastern provinces, and the Government had used its powers under the Terrorism (Temporary Provisions) Act and the Emergency Regulations to maintain the law. A skeleton civil administration was left in the northern and eastern provinces.

Constitutional and legal framework within which the Covenant is implemented, in particular during the state of emergency

456. With reference to that issue, members of the Committee wished to know what the status of the Covenant was within the Sri Lankan legal system and how contradictions between domestic legislation and the Covenant, if any, were resolved; whether there had been any cases during the period under review where the provisions of the Covenant were directly invoked before the courts; whether the provisions of article 155 of the Constitution relating to parliamentary control of the proclamation of a state of emergency had been effectively applied; what had been the impact of the state of emergency on the exercise of the rights guaranteed under the Covenant, in particular with regard to safeguards and remedies; what was the relationship between the courts and non-judicial bodies operating under the state of emergency such as the Advisory Board, the committees established to monitor the activities of the security forces and to probe into the arrest of students, and the Parliamentary Commissioner (Ombudsman); whether individuals who failed to

obtain redress through such bodies could apply directly to the courts; whether there were any other factors and difficulties affecting the implementation of the Covenant; and what measures had been taken to promote public awareness of the provisions of the Covenant.

457. In addition, members of the Committee wished to know specifically what derogations had been made from obligations under the Covenant in the current state of emergency; whether these derogations had been duly notified to the Secretary-General under article 4 of the Covenant; whether legal provisions had been made for ensuring that the amended Constitution would remain compatible with the Covenant; what were the difficulties that could arise if the Constitution was amended to bring it into conformity with the standards of the Covenant; what the legal relationship was between the Constitution and the emergency regulations; whether the series of laws referred to in article 15 of the Constitution and the proposed new article 15 were considered as derogations; what remedies were available to persons whose rights had been violated by Indian forces and what action had been taken by the Sri Lankan Government with respect to complaints of disappearances as a result of actions taken by Indian troops; what was the number of habeas corpus applications made and how many had been declared valid; and whether lawyers engaged in pursuing complaints feared reprisals.

458. Members also wished to know whether the grounds of reasonableness upon which a detention order made by the Secretary to the Ministry of Defence was subject to review were determined by the courts and what criteria were used in that determination; what the demands of the separatists were and how the Government envisaged resolving the situation; what had been done to update legislation in light of the Convention on the Rights of the Child; how, specifically, did "personal laws" derogate from the rights of women and children and what actions did the Government propose to take in order to give effect to the provisions of the Covenant in this regard; why individuals had no direct access to the Parliamentary Commissioner for Administration (Ombudsman); why the system of censorship had been adopted in stages; whether constituents had a particularly close relationship with their Member of Parliament; to what extent Members of Parliament were aware of the human rights enshrined in the Covenant; and why the proposed new amendment to the Constitution substituted the concept of race for that of ethnicity.

459. In reply, the representative said that the Covenant could not be directly invoked before the courts, since international law became part of domestic law only upon formal incorporation. However, the rights provided for under the Covenant were enshrined in the chapter of the Constitution dealing with fundamental rights. Emergency regulations had to be consistent with the Constitution and, hence, with the Covenant. The declaration of a state of emergency had to be ratified by Parliament and could be struck down by the courts on grounds of unconstitutionality. Only the derogations permitted by the Covenant were permitted under the emergency regulations. Safeguards with regard to the writ of habeas corpus and the ability to challenge the validity of the regulations in a court of law remained unimpaired. Information on human rights instruments had been distributed to the armed forces and the police; seminars on human rights topics had been conducted for members of those services; and teaching about human rights had been made part of the school curriculum.

460. Replying to other questions posed by the members of the Committee, the representative explained that when an application for habeas corpus was filed, a writ was issued and the person was immediately produced in court. The remedy could be filed in any of the High Court zones. Petitions for habeas corpus were only successful in cases where an allegation had been made of unlawful detention and the authorities were able to satisfy the court that the persons concerned were either guilty of offences or of such conduct as justified their detention. Normally the period was one week, but in cases in which the authorities alleged that the person concerned was not in fact in their custody, the necessary investigations could of course be lengthy. Recourse to the Ombudsman could only be had through a Member of Parliament because alternative remedies were available. Applications to the Supreme Court regarding allegations of infringements of fundamental rights had to be made within one month but the proposed amendment sought to extend that period to four months. In determining the reasonableness of any restriction on rights in Sri Lanka account was taken of the exigencies of the situation and the nature of the restriction sought. Administrative law was used as a yardstick. Article 15 (1) of the proposed amendment, dealing with permissible derogations, specifically excluded article 13 (4) which governed the right to life.

461. The Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 was originally intended to remain in effect for three years but it had been necessary to keep extending it, and the limiting provision had thus been annulled. The separatists centred their claim on a traditional homeland but the principle of self-determination was interpreted in Sri Lanka as being in effect only at the point of decolonization. The Government had tried various regional autonomy solutions and maintained an ongoing dialogue with the separatists. The repeal of a large number of customary laws could give rise to problems because of popular resistance to change. The Government was prepared to pay compensation to anyone who could establish that he or she had suffered as a result of the activities of the Indian forces but, as those forces were no longer within Sri Lankan territory, inquiries could not be made.

Non-discrimination and equality of the sexes

462. With regard to that issue, members of the Committee wished to be provided with further information on the composition and functions of the Commission for the Elimination of Discrimination and the Monitoring of Fundamental Rights and on the results of its operation, and with statistical data on women's participation in the political, economic, social and cultural life of the country as well as the respective proportion of the sexes in schools and universities. They also wished to know in which respects, other than in the exercise of political rights, the rights of aliens were restricted as compared with those of citizens; whether any measures had been taken to protect the right of Sri Lankan women employed outside the country; whether Sri Lanka was party to the Convention on the Elimination of All Forms of Discrimination against Women; whether discriminatory practices of private enterprises could be made punishable under domestic law; and what the rationale was behind the practice of depriving prisoners of their right to vote.

463. In reply, the representative said that the Commission for the Elimination of Discrimination and the Monitoring of Fundamental Rights consisted of persons having expertise in such areas as law, medicine, science, engineering, banking and administrative or social service. Its mandate was to eliminate

unjust discrimination by government agencies on the grounds of race, religion, language, caste, sex, political opinion, or place of birth. The Commission was not empowered to investigate discrimination by a private entity. The disparity in the number of women admitted to university reflected the fact that in the social context of Sri Lanka, fewer women than men sought employment. Universal adult enfranchisement since 1931 had ensured the free and unhindered participation of women in the country's political institutions, as was evidenced by the number of women occupying government posts. According to the Constitution, all persons, regardless of nationality and citizenship, were equal before the law and were entitled to equal protection before the law, except in respect of freedom of movement and extradition rules. Private companies were beyond the dictates of the Government. Responsibility for the treatment of Sri Lankan women abroad rested with the receiving State. Prisoners were not allowed to vote for historical reasons predating the Constitution.

Right to life

464. With reference to that issue, members of the Committee wished to know on how many occasions since the consideration of the initial report the courts had ordered the death penalty and how often such sentences had been carried out; what the rules and regulations were governing the use of firearms by the police and security forces; whether there had been any violations of those rules and regulations and, if so, what measures had been taken to prevent their recurrence; whether the Government was aware of reports alleging that extrajudicial executions had been carried out and, if so, whether such reports had been investigated; what had been the results to date of the deliberations of the Presidential Commission of Inquiry into Disappearances established in January 1991; what were the composition, powers and functions of the Organization for the Protection of Human Rights through Law Enforcement Agencies and what had been the results of its activities; whether the Government had considered abolishing the death penalty for abetting suicide; and why the State had been relieved from the obligation to investigate all deaths resulting from violence. Members also requested additional information concerning Emergency Regulations relating to post mortems and inquests and regarding progress in reducing infant mortality during the period under review.

465. In reply, the representative said that although it remained on the statutes and was mandatory for offences such as murder, treason and abetment of suicide, no death sentence had been carried out since 1977. All such sentences since that time had been commuted by the President to life imprisonment. Police officers did not normally carry firearms; on those occasions when they did, they were required to use a minimum of force. Use of excessive force was followed by disciplinary action or a criminal trial. The Government was vigilant to ensure that no State agency should resort to extrajudicial executions, but a few such cases were under investigation. The Presidential Commission of Inquiry into Disappearances had received 15 complaints that individuals had been removed by unknown persons or that the whereabouts of those removed were unknown. Public hearings were expected to begin as soon as the investigations had been concluded. The main objective of the Organization for the Protection of Human Rights through Law Enforcement Agencies was to promote and coordinate the work of law enforcement officials and agencies in their recognition of and respect for human rights. Infant mortality had decreased from 22.6 per 1,000 live births in 1986 to

20 per 1,000, due to social welfare policies such as food subsidies, pre-natal care and free health care for the entire population.

466. In reply to other questions, the representative said that Sri Lanka was becoming a transshipment point for illicit drug trafficking, and the Government had maintained the death penalty as a deterrent to potential offenders. It had been left to the discretion of the Inspector General of Police to call for an inquest where a preliminary investigation indicated that there was some culpability on the part of the person who had caused a death, but inquests were not usually held after shootouts between terrorists and government forces. Cases of persons dying while in police custody had been investigated; in at least two cases the officers involved had been convicted.

Treatment of prisoners and other detainees

467. With regard to that issue, members of the Committee asked what controls had been instituted to ensure that persons arrested or detained were not subjected to torture or to cruel, inhuman or degrading treatment; whether machinery existed for carrying out an independent and impartial investigation of allegations of torture and of arbitrary and extrajudicial executions and, if so, whether any such independent investigations had been conducted; what the arrangements were for the supervision of places of detention and for receiving and investigating complaints; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment were complied with; whether the relevant regulations and directives were known and accessible to prisoners; whether the International Committee of the Red Cross (ICRC) had full access to the north-eastern part of Sri Lanka; whether the authorities were prohibited from detaining any person in a place other than a publicly recognized and gazetted prison and, if not, whether judges were allowed to visit such unofficial detention centres.

468. In reply to questions posed by members of the Committee, the representative said that every person admitted to prison was examined by a doctor and was informed of his rights and duties, including the right to complain about any ill-treatment. The briefing of detainees also included information regarding the United Nations Standard Minimum Rules for the Treatment of Prisoners and, in places where the Standard Minimum Rules were available for reference, detainees were free to consult them. The Emergency Regulations required the magistrate having jurisdiction over a prison to visit it at regular intervals and to record any complaints from detainees. Under the Prisons Ordinance, the Minister of Justice appointed a Board of Visitors, which was empowered to visit any prison in Sri Lanka to examine prison conditions, hear the complaints of inmates and make appropriate recommendations to the authorities. Moreover, members of the delegation of the ICRC currently in Sri Lanka were granted free access to all places of detention, and their reports were considered at the highest political level. The Supreme Court could and did examine allegations of torture made by detainees. The Court of Appeal, when examining the legality of detention by the procedure of a writ of *habeas corpus*, could examine any allegation of mistreatment of a detainee during his period in custody, but in most cases inquiries proved that such allegations were unfounded. A representative committee under the umbrella of the All Parties Conference was required periodically to visit places other than regular prisons where detainees were being held.

469. In reply to other questions, the representative said that there were a few camps and places other than regular prisons that had been designated as places where detainees could be held, and judges and magistrates had the right to visit them. The Prevention of Terrorism (Temporary Provisions) Act provided that any person in respect of whom any detention order or restriction order had been made should be informed of the unlawful activity in connection with which such order had been made. The Act also provided that such person or any other person on his behalf might make representations to the Advisory Board, which took the place of the judicial authority where persons were normally brought to trial. A detention order was issued if the Minister had reason to believe that a person was connected with or concerned in any unlawful activity constituting an offence as defined under the Act. The aggregate period of such detention could not exceed 18 months and a detained person could lodge a complaint with an Advisory Board or challenge the validity of the detention order in a court of law. If he was found to be the victim of an unlawful arrest, the court had the power to award compensation.

Liberty and security of the person

470. With reference to that issue, members of the Committee asked for a clarification of the provisions of the Prevention of Terrorism Act of 20 July 1979 and of allegations that the safeguards included in that Act had not been strictly observed, particularly in relation to arrests of terrorist suspects. They also wished to know under what circumstances and for what periods persons might be held in preventive detention without being charged with a criminal offence; what authorities had the power to order such detention; what remedies were available to persons (and their relatives) who believed themselves to be detained wrongfully and how effective such remedies were; how quickly after arrest a person's family was informed and how soon after arrest a person could contact his lawyer; and what the law and practice were regarding detention in institutions other than prisons and for reasons other than crimes.

471. In addition, members of the Committee wished to know whether under the Prevention of Terrorism Act a magistrate could himself decide whether or not to release a person from custody; what the evidential value was of statements elicited through threats or torture; what weight was accorded to statements given in the absence of cross-examination; whether the provisions of section 18 (1) of the Act applied to the accused himself when he gave evidence as a witness or only to other witnesses; what measures had been taken to ensure that lawyers could carry out their professional responsibilities without interference; whether there had been any complaints of unauthorized arrests by members of the security forces; whether there were adequate safeguards against the unjustified extension of detention orders; whether the habeas corpus rule applied in cases of preventive detention and how the lawfulness of such detention was monitored; and whether the provisions of section 14 (2) (a) (ii) of the Prevention of Terrorism Act had led to the suppression of information concerning abuses by the security forces.

472. In his reply, the representative said that under the Prevention of Terrorism Act, a special procedure had been instituted whereby the period within which a detained person must be brought before a magistrate had been extended from 24 hours to 72 hours. The safeguards set forth in the Act could be enforced through fundamental rights applications or through habeas corpus applications to the Supreme Court. The Ministry of Defence had the authority

to order persons detained in connection with terrorist activities for only three months, but such orders could be renewed, and the total length of detention could reach 18 months. Remedies for wrongful detention were available through a habeas corpus procedure, a fundamental rights application or an application to the Advisory Board. A person's family was informed of his arrest as soon as possible. Access to a detainee after his arrest might be denied during the initial investigation for a maximum period of approximately two weeks, but the reasons for and the duration of such denial could be challenged in a court of law. Persons could be imprisoned under maximum security conditions or in detention camps under less rigorous conditions. A person who was likely to commit a crime or had a criminal record might be kept in preventive detention for a limited period.

473. Responding to additional questions raised by members of the Committee, the representative said that the Sri Lankan judicial system was controlled by the principles of administrative law. No ministerial order made without jurisdiction, or made unreasonably, or expressed too broadly, would be considered valid. The notion of an "accessory after the fact" as a person criminally liable did not exist and any statement made as a result of inducement, threat or promise would be considered irrelevant. A confession implicating a co-accused could not normally be used against that co-accused, but given the nature of terrorist activity, a law had been enacted admitting such testimony. Such statements could be used for the purpose of establishing an offence but were given only minimal evidential weight. Lawyers receiving threats had their allegations investigated and were provided with police protection if necessary.

Right to a fair trial

474. In connection with that issue, members of the Committee wished to know what guarantees there were for the independence and impartiality of the judiciary, particularly in respect of legal and administrative provisions governing tenure, dismissal and disciplining of members; whether there was any free legal aid and advisory scheme and, if so, how it operated; how the Bar in Sri Lanka was organized; and whether the possible conflict relating to the retroactivity of laws between articles 15 (1) and 13 (6) of the Constitution had been referred to the Law Commission and, if so, with what results.

475. In reply to questions relating to the independence of the judiciary, the representative said that the Constitution fixed salaries and tenure, and insulated appointments and tenure from interference by the executive branch. Disciplinary control was exercised by an independent Judicial Service Commission. The judiciary was controlled by the superior courts, and interfering with its independence was an offence. The legal aid scheme in Sri Lanka was administered by the Bar Association and funded by the State, the Asia Foundation and other foreign donors. Counsel was assigned at the State's expense to criminal defendants and appellants requiring assistance. The Bar Association was an independent body of attorneys at law. It maintained a dialogue with the Ministry of Justice on the administration of justice and expressed its views on legal issues of national importance. Members of the Bar had intervened in the majority of the fundamental rights and habeas corpus cases. Retroactivity of laws was applied only with extreme caution and only where an act would have been considered criminal under the laws of civilized nations.

Freedom of movement and expulsion of aliens

476. With regard to that issue, members of the Committee asked what legal provisions governed the expulsion of aliens and whether an appeal against an expulsion order had suspensive effect.

477. In reply, the representative said that an order of removal or an order of deportation was made by the Minister of Defence and could be canvassed before the Court of Appeal by invoking its writ jurisdiction. The issuance of a writ had suspensive effect.

Right to privacy

478. In connection with that issue, members of the Committee asked for information concerning the law and practice relating to permissible interference with the right to privacy and wished to know whether Sri Lankan legislation also afforded protection against electronic surveillance.

479. In reply, the representative said that there were no laws which embodied the provisions of article 17 of the Covenant but there were laws on such matters as defamation and the secrecy of inland revenue declarations. The Government was studying the laws on data protection of other countries. The only available method of electronic surveillance was telephone-tapping.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

480. With reference to those issues, members of the Committee wished to know whether Buddhism enjoyed privileged treatment as compared to other religious denominations; what the legal regime governing the press and mass media was; what controls were exercised on the freedom of the press and the mass media under Sri Lankan law; to what extent citizens and the press had access to government information; whether foreign journalists were subject to the same restrictions as Sri Lankan journalists in covering ethnic conflicts; whether there had been any cases where the publication of newspapers had been banned; what regulations were applicable to the production and release of programmes on State-run television; whether the Government had any plans to promote private ownership of television broadcasting facilities; in what languages programmes were aired; and whether specific measures had been taken in order to achieve harmony among the major religious groups.

481. In response, the representative stated that the freedom to manifest one's religion was guaranteed by the Constitution, which also sought to avoid religious conflict by stipulating that different religions must establish their places of worship and engage in other manifestations of religion at a certain distance from each other. The primacy of Buddhism meant, in practice, that when State functions were opened by religious ceremonies, Buddhist rituals were performed first. Freedom of speech was guaranteed by the Constitution, and the activities of the press were supervised by a Press Council. News coverage of terrorist acts was restricted only if it was liable, in the view of the Press Council, to trigger a strong backlash. There was no State control of the media. Broadcasting was in English, Sinhala and Tamil because all citizens understood at least one of those languages. The principles of the Official Secrets Act were based on British law and intended to operate in much the same way, and no distinction was made between foreign

and local journalists. Government information could be provided subject to the interests of privacy, State privilege or official secrets. No affirmative action had been taken on behalf of religious amity because it would be regarded by some as interference in their religious rights.

Freedom of assembly and association

482. With reference to that issue, members of the Committee asked for information about the number, membership, organization and effectiveness of trade unions in Sri Lanka and a description of the relevant laws and practices relating to the establishment of political parties and concerning public meetings. They also wished to know what had been the impact on the exercise of the right to freedom of assembly and association, if any, of the lengthy period of the state of emergency; to what extent it had been possible to exercise the right to freedom of assembly; and whether Sri Lankan law prohibited discrimination in hiring and promotion and prescribed civil remedies in the event of violations.

483. In reply, the representative said that there were 1,004 registered trade unions and that collective bargaining was fully operational in both the state and the private sector. Any group of persons could register itself as a political party, as evidenced by the fact that even militant groups had political wings registered as political parties. Public meetings could be held freely provided prior approval had been obtained from the local police to ensure that there were no law and order or traffic problems as a result of the holding of such meetings. Notwithstanding the state of emergency, provincial council, presidential and parliamentary elections had been held recently throughout the country, and, except in certain parts of the north and east, local authority elections would be held in May 1991. Emergency regulations were temporarily suspended whenever the Commission of Elections found that they hindered the election process. Trade union activity was not restricted except in the free trade zone, where foreign companies had secured special non-trade union terms on the grounds that the wages they paid were higher than elsewhere.

Protection of the family and children

484. With regard to that issue, members of the Committee wished to receive information on the law and practice relating to the employment of minors and illustrations of the activities undertaken by the Presidential Commission on Youth Unrest. They also asked whether children born out of wedlock had the same rights as children born in wedlock and what the impact of the Children's Charter, if adopted, would be on the enjoyment of the rights of the child under the Covenant.

485. Responding to questions put by members of the Committee, the representative said that persons under the age of 14 years could not be employed. Children born out of wedlock would enjoy the nationality of the mother, whereas legitimate children took the father's nationality. The Children's Charter had been signed, and the Government was studying the World Declaration on the Survival, Protection and Development of Children and the Plan of Action for its implementation in the 1990s.

Right to participate in the conduct of public affairs

486. Regarding that issue, members of the Committee wished to know to what extent members of minority groups and persons with differing political opinions had access to public office.

487. In reply, the representative stated that there were no restrictions on citizens seeking public employment but that an ethnic recruitment quota had been introduced at the national and provincial levels. These measures had been challenged and the matter was currently before the Supreme Court.

Rights of persons belonging to minorities

488. With reference to that issue, members of the Committee asked for comments on measures taken to guarantee the rights of ethnic and religious minority groups and on the assistance given to them to preserve their cultural identities, languages and religions. They also wished to know whether minority groups were represented in Parliament and in Provincial Councils.

489. In response, the representative stated that within the framework of the All Party Conference (APC) a continuous, free and open dialogue had been maintained between the Government and all political parties, including those which were based on ethnic and other grounds. The APC was also considering questions relating to the redress of minority grievances. Separate ministries had been established with a view to promoting the interests, development and progress of the Muslim and Hindu religious groups. Minorities were adequately represented in Parliament.

Concluding observations

490. Members of the Committee, in expressing their appreciation to the Sri Lankan delegation for having engaged in a useful dialogue, acknowledged the difficult conditions facing the Government in maintaining law and order. They were of the view that certain provisions of the proposed seventeenth amendment to the Constitution should be reconsidered in the light of the Covenant and voiced concern about human rights violations such as extrajudicial executions, the use of excessive force by the police and the armed forces, and the detention of persons without trial. Other concerns expressed by members of the Committee related to the efficacy of *habeas corpus*, restrictions of rights due to the state of emergency, the 18-month maximum period for detention and the right to compensation and to freedom of information. It was also felt that the interpretation of terrorism, as contained in the Prevention of Terrorism Act, was too broad and that the Act lacked provisions for recourse to an impartial and independent court. Members also pointed to the usefulness of making the Covenant better known to law enforcement officers and to people in the legal profession and expressed the hope that future reports would be more substantial and prepared according to the Committee's guidelines.

491. In concluding the consideration of the second periodic report of Sri Lanka, the Chairman said that, notwithstanding the shortcomings of the report, the discussion of it had been fruitful, largely because of the competence of the delegation. He expressed the hope that the State party would take the observations made by members of the Committee into account in revising its legislation.

Sudan

492. The Committee considered the initial report of the Sudan (CCPR/C/45/Add.3) at its 1065th and 1067th meetings, held on 8 and 10 July 1991 (see CCPR/C/SR.1065 and SR.1067).

493. The report was introduced by the representative of the State party, who drew attention to several developments that had occurred since the submission of the report on 3 January 1991. First, Constitutional Decree No. 4, which laid the foundations of a federal system of government in the Sudan and established rules concerning state budgets and revenues, had been promulgated. Secondly, a conference on justice and legal reform, attended by professionals and experts in the field of law and the administration of justice, had been held. The conference produced a number of significant recommendations relating, in particular, to the judiciary, the Ministry of Justice and the Attorney-General's Office, penitentiary institutions, military justice, legal reform and legal education and training, and the drafters of those recommendations were determined to seek their speedy implementation. Thirdly, approximately 300 political detainees had been released on 29 April 1991, with only a few individuals facing specific charges remaining in prison. Finally, the representative noted that a number of steps had been taken towards the establishment of a political system of participatory democracy. In that regard, the perceived unworkability of both multi-party democracy and the single party model, as well as the country's enormous linguistic, ethnic and cultural mix, called for the establishment of a system without political parties to secure popular and truly democratic participation in the decision-making process.

494. Members of the Committee expressed their understanding for the serious difficulties facing the Sudanese Government and their appreciation for the frankness and sincerity of the report. However, it was noted that the report was brief and incomplete and had not been prepared in accordance with the Committee's reporting guidelines.

495. With reference to article 2 of the Covenant, members of the Committee wished to know what the status of the Covenant was under the constitutional decrees and, in view of the absence of provisions giving effect to the rights enshrined in the Covenant, how respect for those rights was ensured; whether the constitutional decrees applied to acts committed before their adoption; whether the Covenant could be invoked before the courts; how the Revolutionary Command Council for National Salvation had been established and to what extent it enjoyed the confidence of the people; whether the Penal Code, which was based on Shariah, was not discriminatory in certain respects and if it applied also to the non-Muslim population; and, in general, to what extent that code could be reconciled with the provisions of the Covenant. Members of the Committee also wished to receive more information on the envisaged system of participatory democracy, particularly on the extent to which the terms of articles 19, 21, 22 and 25 of the Covenant would be reflected in that system, as well as on the historical, political and economic factors underlying the current problems in Sudan.

496. In connection with article 4 of the Covenant, members of the Committee asked what had been the impact of the de jure or de facto state of emergency on trade union freedoms as provided for in article 22 of the Covenant and in

ILO instruments; whether the Government had notified the Secretary-General of its promulgation of the state of emergency; and whether there was any prospect of the state of emergency being lifted.

497. As regards article 6 of the Covenant, members of the Committee wished to receive information on the number and nature of crimes for which the death penalty could be imposed, as well as on the number of cases in which the death penalty had been imposed and carried out.

498. In connection with articles 7 and 8 of the Covenant, members of the Committee wished to know what the Government's position was regarding the use of torture to compel prisoners to testify and whether the new Penal Code provided for public flogging, crucifixion and amputation and, if so, whether such punishments were applied in practice. Members also requested clarification concerning extrajudicial executions, acts of torture in general and the resurgence of forms of slavery in several parts of the country.

499. In relation to articles 9 and 10 of the Covenant, members of the Committee asked how the powers of the Revolutionary Command Council for National Salvation to order the arrest of individuals merely suspected of endangering political or economic stability could be reconciled with the provisions of those articles and whether the political prisoners still under detention were to be tried before special or ordinary courts.

500. With reference to article 14, members of the Committee requested additional information on the functioning and procedures of the special courts and the public order courts in the Khartoum marketplace. They also wished to know what measures had been taken to ensure the independence of the judiciary; what qualifications were required for appointment as a judge of a special court; and how appeals to the Revolutionary Command Council for National Salvation against an arrest could operate, given that the President of the Council was himself ultimately responsible for ordering such arrests.

501. In connection with article 18 of the Covenant, members of the Committee wished to know whether the crime of apostasy, defined as advocating abandonment of Islam by a Muslim, was considered by the Sudan to be compatible with that article.

502. In connection with article 19 of the Covenant, members of the Committee requested information on the scope of the expression "showing of any political opposition" in paragraph 8 (a) of the report; whether foreign newspapers were allowed; whether the activities of foreign journalists were in any way restricted; whether a prior licence was required to publish newspapers; and whether there were any plans for the privatization of broadcasting and television.

503. With reference to articles 21 and 22 of the Covenant, members of the Committee requested information regarding trade union freedoms in the Sudan, particularly concerning the alleged arrests of trade unionists and academics who had taken part in a peaceful demonstration.

504. Regarding article 25 of the Covenant, members of the Committee asked if the one-party system could meet the requirement of that article. They also noted that the number of political parties in a given political system was

less important than the extent to which citizens took part in public affairs and were eligible to compete for all offices of the State, including the highest. Noting that government employees could be dismissed by the Revolutionary Command Council for National Salvation and lose their benefits, members also asked how tenure and pension rights were protected.

505. With reference to article 27 of the Covenant, members of the Committee requested information on the composition of Sudanese society and on how the Government intended to arrange for the coexistence of different groups within a federal system.

506. Responding to questions raised and comments made by members of the Committee, the representative stated that his Government was willing to recognize shortcomings and take the necessary measures to respect the obligations contained in international instruments. However, human rights was a field in which there was a risk of partiality or double standards, particularly with regard to the treatment of a number of third world countries. Countries should be allowed freely to choose their legal system based on their convictions, traditions and customs. In the light of the renewed and increased emphasis being given in recent years by Islamic countries to the application of the Shariah, it would be desirable to submit the rights contained in international human rights instruments, which were adopted at an earlier stage, to a review.

507. Concerning the new Penal Code, the representative noted that the Code contained 132 crimes, of which eight could be classified as political crimes and nine were related to State security. The three southern states in the Sudan with a predominantly non-Muslim population were exempted from the application of Islamic law in penal matters. All laws adopted prior to the suspension in 1989 of the provisional Constitution of 1985 would remain in force until other laws had been adopted. The Covenant, by virtue of its ratification, formed an integral part of domestic legislation and could be invoked before all tribunals in the Sudan. The envisaged system of participatory democracy would have a pyramidal structure, with villages or town-districts at the bases, and providing also for participation by professional organizations.

508. With reference to article 4 of the Covenant, the representative stated that the state of emergency would not be lifted as long as the parties to the conflict in the south of the Sudan had not decided on a peaceful settlement. At present there were two points of contention: the choice of the nation's political structure (multi-party, federalism or participatory democracy) and the convening of a conference charged with drawing up a new constitution.

509. In reply to questions raised in connection with article 6 of the Covenant, the representative said that three civilians had been executed for illegal trafficking in drugs and currencies. The latter crime was considered to be extremely serious in the light of the current economic situation in the Sudan. The Revolutionary Command Council for National Salvation was charged with approving or overturning death sentences. There was no practice of extrajudicial execution in the Sudan.

510. As regards article 7 of the Covenant, the representative explained that many of the punishments prescribed by Islamic law were not considered as cruel or degrading because they had been imposed by God and derived from His will.

511. Concerning article 9 of the Covenant, the representative said that the approximately 300 political detainees who had been released were not required to report to the police on a daily basis and that there were no political prisoners in the Sudan at present.

512. With reference to article 10 of the Covenant, the representative said that in December 1990, a multinational mission had visited Sudanese prisons and had concluded that prison conditions were not inhumane and that torture was not practised.

513. In connection with article 14 of the Covenant, the representative said that the special courts were normally composed of three members of the military or other persons of integrity and competence and had jurisdiction over crimes related to drug trafficking and economic crimes. Their decisions could be appealed before the Chairman of the Supreme Court.

514. With reference to article 18 of the Covenant, the representative, noting that the crime of apostasy was punishable by death, explained that Islam should not only be seen as a religion but as a complete set of precepts for private and public life. Persons committing apostasy therefore were a danger to the fabric of society and could be compared to traitors in countries with a different legislation. Islamic movements in a number of countries had sought to eliminate from their legislation all provisions contrary to Islamic law.

515. Referring to questions regarding articles 21 and 22 of the Covenant, the representative said that no academics had been dismissed by the Government.

516. Replying to questions concerning article 25 of the Covenant, the representative explained that government officials could be dismissed with or without benefits on the basis of a decision by the Revolutionary Command Council for National Salvation. In most cases they were granted benefits.

Concluding observations

517. In concluding the consideration of the initial report of the Sudan, members of the Committee expressed appreciation for the frankness and directness with which the delegation had replied to their questions. In connection with the priority given to Islamic law in the Sudan, members were of the view that Islam was a progressive religion that did not pose an obstacle to the implementation of the Covenant in Islamic countries. They pointed out that in many States in the Islamic world had participated in the drafting of the Covenant and that if certain of its provisions had been deemed irreconcilable with Islamic law, States could have entered reservations. Furthermore, although a State might defend its culture and national religion, in doing so, it could not deviate from the fundamental common values elaborated in the Covenant, which were aimed at the development of the individual and which were applicable to the entire international community. Such values, moreover, should be reflected in domestic legislation. At the same time, members considered that it would be possible for the Sudanese authorities and the Committee together to find a way to reconcile the Sudan's

freedom to live within a social system of its own choosing with the Committee's duty to ensure respect for human rights.

518. Members also pointed out that the Committee was composed of independent experts and never applied double standards in considering reports from States parties. Its task was to assist all States parties in implementing the provisions of the Covenant and to promote the universal application of that instrument. With regard to the issue of a multi-party system, members noted that in the absence of political opposition, Governments were likely to exercise their powers in a non-democratic fashion and expressed the hope that the Sudan would soon practise democracy.

519. Additionally, in the view of members of the Committee, certain punishments under Sudanese law constituted cruel or degrading treatment; domestic provisions regarding the crime of apostasy were not compatible with articles 6 and 18 of the Covenant; and Constitutional Decree No. 2 had been drafted too vaguely with respect to the Government's power to limit political activities.

520. The representative of the State party reiterated that the Government attached great significance to the application of Islamic law in the country. The Government had agreed, in principle, to the establishment of a national human rights council and intended to request assistance from the Centre for Human Rights in that regard. The discussions with the Committee had been useful and the observations and suggestions made by members would be appropriately reflected in the second periodic report.

521. In concluding the consideration of the initial report of the Sudan, the Chairman also thanked the representative of the State party for his candor and cooperation. Regarding the question of the compatibility of the Covenant with Islamic law, he reaffirmed that, although the Committee sought, in interpreting the provisions of the Covenant, to take into account various cultural factors, it was obliged to apply the principles of the Covenant without any distinctions among States parties. He hoped that the second periodic report of Sudan would show evidence of progress in implementing the international standards set forth in the Covenant.

Madagascar

522. The Committee considered the second periodic report of Madagascar (CCPR/C/28/Add.13) at its 1073rd to 1075th meetings on 15 and 16 July 1991 (see CCPR/C/SR.1073-1075).

523. The report was introduced by the representative of the State party, who explained that a major revision of the 1975 Constitution, initiated by the Government and political groups, was under way. The report did not reflect this recently initiated process, which would lead to the adoption of a new institutional framework. Instead, the report described the efforts made over a period of more than a decade to comply with the Government's obligations under the Covenant, despite serious economic and political troubles. The Democratic Republic of Madagascar had never adopted the single party system. From the beginning, multi-party and multi-candidate elections at all levels had been the foundation of political life and universal suffrage the only

source of legitimacy. The Constitutional High Court had been increasingly active. The judiciary had been strengthened through the reform of the Supreme Court and press censorship had been abolished. In addition, the proposed revisions of the Constitution now being discussed by the Government and opposition no longer referred to socialism and embraced major reforms of institutions such as the Supreme Council of the Revolution, the Military Committee for Development and the Constitutional High Court.

Constitutional and legal framework within which the Covenant is implemented

524. With regard to that issue, members of the Committee wished to receive information on the organizational structure, competence and powers of the decentralized communities and on decisions, if any, taken by the Constitutional High Court or the Supreme Court, in which reference was made to the Covenant. They also asked what follow-up action had been taken as a result of views adopted by the Committee under the Optional Protocol with regard to Madagascar and what measures had been taken to guarantee the independence of the judiciary, especially with regard to the supervisory body established within the Supreme Court. In that connection, additional information was requested regarding the security of tenure of judges and of their emoluments and the independence of the body appointing them. With regard to the Committee's findings under the Optional Protocol, it was pointed out that taking action on such decisions did not simply involve the release of political detainees but might also involve, where appropriate and in the light of the Committee's findings, the award of compensation to the victims of violations. It was also asked what the new economic policies adopted in Madagascar with the encouragement of the International Monetary Fund and the World Bank had had on the implementation of the Covenant.

525. Further information was sought regarding the work undertaken with a view to the amendment of the Constitution, in particular the general pattern of the reforms envisaged. It was asked whether it was intended to include a provision in the new constitutional text similar to article 12 of the present Constitution concerning the safeguarding of the unity of the socialist legal system. Further information was sought regarding the remedies and compensatory arrangements available to people who believed that their rights had been violated. Information was also requested concerning the relationship between the Charter of the Malagasy Socialist Revolution and the Constitution; the ranking of enactments such as laws, orders and regulations in the country's legal system; the position of international treaties generally and of the Covenant in particular under municipal law; whether the Covenant was directly applicable and could be relied upon in the courts; and more generally, in the light of the powers given to the executive to enact legislation in certain fields, how the separation of powers was ensured in Madagascar. With regard to the organization of the judiciary, additional information was requested regarding the functions and activities of the Constitutional High Court, the Supreme Court and special tribunals and the redefinition of their functions contemplated under the constitutional reform. Questions were also asked concerning the scope of the Supreme Court's supervision of lower courts; the functions of the supervisory body established within the Supreme Court; the reasons for the delay in establishing the peoples courts mentioned in articles 83 and 84 of the Constitution; the way in which the participation by citizens in the oversight of justice mentioned in the report had been assured in practice; the powers of lay magistrates; the

reasons for the establishment of so many special tribunals and procedures, notably in the case of offences such as the theft of cattle; the specific character and mode of operation of each of these courts and whether there were possibilities of appeal from their decision.

526. With regard to these questions, the representative of the State party explained that decentralized communities were traditional structures which had been embodied in the administrative, legal and institutional system of Madagascar since 1975. These were assemblies of people practising self-government on a voluntary basis, the members being elected by universal suffrage in the case of the lower communities and by limited suffrage in the case of higher assemblies, the structure being pyramidal. Although the Constitution gave them broad powers for the administration or maintenance of order it had not fully defined them and it was therefore proposed to review their structure.

527. With regard to the organization and independence of the judiciary, the representative explained that no decisions of the Constitutional High Court or the Supreme Court had made reference to the Covenant. The independence of the judiciary was expressly enshrined in article 83 of the Constitution and guaranteed by the Supreme Court. The Supreme Court had recently been reorganized and a supervisory body of professional judges elected by the People's National Assembly had been established. The organization of the judiciary and the separation between the executive and legislative branches was being redefined. The constitutional reform was intended to establish an executive responsible to Parliament. The Constitutional High Court would shortly be abolished. Cases could be referred to it by the President of the Republic, the People's National Assembly and individuals. It could also take up issues on its own initiative when it believed that the Constitution had been violated.

528. The special tribunals had not been established by the Constitution. Some of them went back to colonial times. The theft of cattle was a menace to society and a serious focus of criminal activity, which had on occasion degenerated into tribal and regional wars. In an effort to control the problem, the State had set up special tribunals which unhappily had not been able to bring the banditry to an end. The creation of the special economic tribunal in response to the growth of the black market and corruption had been intended to serve an essentially psychological purpose. The establishment of other organs had not sufficed to resolve major economic and social problems, and it was proposed to abolish them when the judiciary was reorganized. The peripatetic tribunals were not special tribunals. They were intended to provide for the geographical decentralization of the justice system necessitated by the size of the country and the few judges available.

529. With reference to measures taken in response to findings of the Committee under the Optional Protocol, the representative explained that all the persons mentioned had been released and were leading a normal life in Madagascar or had left the country. One of the complainants was continuing to make complaints to the Committee.

530. The commitments given by the Malagasy authorities to the major international financial and monetary institutions had resulted in serious difficulties. Structural adjustment, successive devaluations, external trade

problems and a trend towards the increasing pauperization of a good part of the population were factors that weighed heavily on the Government. Poverty had deepened and unemployment had risen, while the main social indicators had fallen and delinquency was on the increase. In spite of these difficulties, all the elections planned had been organized in a multi-party political atmosphere. The Government had also proposed a revision of the Constitution, including a reference to the Universal Declaration of Human Rights and the repeal of article 108 dealing with the socialist form of the State. The combination of the Charter of the Malagasy Socialist Revolution and the Constitution was an outmoded concept and was not embodied in any of the constitutional drafts under consideration. The Charter was an historical document defining a programme and principles whose socialist connotation had emerged from the traditional structures of Malagasy society. The programme resulted in cumbersome and ineffective administration, which everyone wished to see simplified.

Right of self-determination

531. With reference to that issue, members of the Committee wished to know what was meant by "direct administration" in paragraph 62 of the report. Additional information was requested with regard to the Government's position regarding recent changes in South Africa; the ethnic and community structure of Madagascar; the expected effects of the new policy of decentralization, particularly on the highly centralized system of administration inherited from colonial times; the possible organization of new elections in Madagascar in the near future; and, more generally, the implementation of the right to self-determination in the light of article 12 of the Constitution.

532. In his reply, the representative of the State party explained that the expression "direct administration" designated the colonial administration imposed by France after 1896. The 1975 Constitution had inaugurated decentralization by assigning broader functions to the local communities. The purpose of these measures had been to eliminate the vestiges of colonial administration and of the feudal system by enabling the population to decide its own form of administrative organization. This decentralization had been the subject of sharp criticism and new forms of organization were under consideration. During the 1989 elections, the President of the Republic had been elected by 52 per cent of the votes cast, but the legitimacy of the result had been challenged. The question of the revision of the electoral system was under consideration and new elections would logically be organized later.

533. With regard to relations with South Africa, he emphasized that Madagascar had always defended the rights of the black population of South Africa and had employed all possible means to assist the national liberation movements. In view of recent developments in South Africa, Madagascar had decided, after consultation with the African National Congress, to resume direct relations pending a decision of the Organization of African Unity regarding the re-establishment of diplomatic relations.

Non-discrimination and equality of the sexes

534. In connection with that issue, members of the Committee wished to receive information on remaining areas of discrimination on the basis of sex, in

particular with regard to the administration of the household, and on specific measures being taken to overcome them; on the extent to which the rights of aliens were restricted as compared with those of citizens; and on the main legislative limitations or prohibitions affecting aliens. It was also inquired whether there were any plans systematically to remove from laws and regulations such outdated provisions as article 4 of the Code of Commerce, which seemed not to be in line with the Covenant; what recourse was open to women in cases of discrimination; and whether there was any limitation in the recruitment of women magistrates.

535. In his reply, the representative of the State party explained that women played a full part in economic, social and political activities and occupied an important place in the life of the nation and that during the past 12 years the Government had made every effort to eliminate discrimination on the basis of sex. There were no restrictions on the recruitment of women magistrates, and in fact there were more female than male magistrates. There were, however, some areas, such as private employment, inheritance rights or the marriageable age of women, in which discrimination still occurred. Another problem was the continuing practice of polygamy and, in some remote villages, of contractual marriages. At the present time, quite a number of women held high posts in the administration, but the situation was different lower down, both in urban and rural areas.

536. Aliens enjoyed all freedoms in Madagascar, including freedom to settle. Their voting rights, however, were limited and they were subject to administrative regulations in some economic areas, such as the purchase of real estate.

State of emergency

537. With regard to that issue, it was inquired what procedures had been adopted for implementing emergency legislation; whether the National People's Assembly had any part to play in the enactment of such legislation; and whether any progress had been made towards stabilizing the security situation in Madagascar.

538. In his reply, the representative of the State party explained that the main reason for the unstable state of the country was the theft of cattle, an endemic activity which was difficult to stop in view of the high prices which thieves were able to obtain and due to the lack of adequate financial resources in the budget for law and order. Originally an inter-village matter, the theft of cattle was now practised on a large-scale basis. No fully successful means of dealing with cattle thieves had yet been devised, and the Government had always been hesitant in calling out the army for that purpose. A state of emergency had never been declared by the Government, but emergency provisions had been applied in some towns and regions following riots, demonstrations or natural disasters.

Right to life

539. With reference to that issue, members of the Committee wished to know how many of the 51 death sentences pronounced between 1977 and 1987 had been carried out; whether the authorities had been successful in putting a stop to extrajudicial executions of criminals in the rural areas; what measures had

been taken and results achieved in reducing the rate of infant mortality and protecting maternal and child health; and whether measures had been taken to investigate the loss of life and alleged extrajudicial executions resulting from military activities, in particular during operations in April 1988, to bring those responsible to justice and to prevent any recurrence of such incidents. Further information was also requested regarding the situation of persons who had been sentenced to death.

540. In his reply, referring to the events in 1988, the representative of the State party said that the army had been called upon by the civil authorities to participate in those operations and that there had been no summary executions. The army had been reluctant to participate in the operations, which had resulted in battles between cattle thieves and security forces and which had caused the death of about a dozen police officers since 1975. Furthermore, the army had also, in certain cases, been called upon to separate groups from rival villages that had been fighting one another. Every effort had been made to identify persons responsible for the excesses, and several hundred leaders of decentralized communities who had incurred collective responsibility for such excesses had been brought to trial and given severe prison sentences. There had also been several cases where the Government had been obliged to imprison an entire village the inhabitants of which had acknowledged their responsibility.

541. Since 1956, no death sentence had been carried out in Madagascar, and there was a continuing debate regarding the abolition of the death penalty. Although general measures were being taken to reduce the rate of infant mortality and to protect maternal and child health, no progress had been made due to lack of resources.

Treatment of prisoners and other detainees

542. With regard to that issue, members of the Committee wished to know whether there had been any complaints of torture and/or cruel or inhuman treatment against public officials and, if so, whether those guilty of such offences had been punished; to what extent the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and whether they were made known and accessible to prisoners; what measures were being taken to address the problem of prison overcrowding; whether consideration was being given by Madagascar to acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, whether prison overcrowding had ever resulted in the death of prisoners; what remedies were available in cases of torture; and whether the Government had carried out any educational campaigns against torture.

543. In his reply, the representative of the State party emphasized that his Government had received no complaints of torture or cruel or inhuman treatment against public officials and that a hierarchical surveillance structure had been established in prisons with regard to prison guards. Legal action against torture came within the framework of general legal procedures and there was no specific legislation in that respect. No specific educational measures were being taken to make the population more aware of such problems, except for those included in the training of penitentiary and other relevant personnel. Madagascar was, however, facing a serious problem of prison overcrowding since virtually no prisons had been built since independence,

during which time the population had risen from 3 to 12 million. Furthermore, there had been deaths as a result of epidemics and malnutrition, the latter particularly when there had been a shortage of rice for the whole population of the region. An attempt had been made to improve the situation by granting provisional release, moving prisoners to the countryside where they could engage in agricultural work, allowing families to provide food for detainees in addition to that supplied in prison and appointing prison doctors to combat the risk of epidemics.

Liberty and security of the person

544. In connection with that issue, members of the Committee wished to know what the maximum period of pre-trial detention was in law and practice; how quickly after arrest a person's family was informed and how soon after arrest a person could contact a lawyer; whether there were any particular legal actions that could be taken in cases of detention, such as *habeas corpus*; and whether, in view of the long delays in bringing a person to trial, measures had been taken to reduce the number of those being held in detention pending trial and increasing the number of persons released on bail. In addition, it was asked why the Government had not repealed the ordinances sanctioning failure to fulfil a contractual obligation by imprisonment, which was not in conformity with article 11 of the Covenant. Further information was also requested on the events of May 1990, which had led to the detention of persons who subsequently alleged that they had not had prompt access to their families or lawyers and had been subjected to maltreatment during their detention, and concerning the nature of non-military national service and its relation to the economic and social development of the country.

545. In his reply, the representative of the State party said that the maximum length of pre-trial detention, in law, was six months. In practice, however, such detention was commonly as much as 18 or 20 months due to the lack of magistrates and to other material problems. The person's family was informed as rapidly as possible so that family members could bring food to the detainees and the person could contact a lawyer immediately. Usually, the family arranged for legal assistance, but in other cases the administration ensured that the person had the services of a lawyer. There were no special legal remedies in cases of detention, such as *habeas corpus*, other than the usual provisions prohibiting arbitrary arrest. Although bail was not a common practice in Madagascar, the provisional release of detainees was practised systematically in view of the overcrowding in the prisons, as well as the length of pre-trial detention.

546. Responding to other questions, the representative said that in May 1990, some 10 armed persons had forced their way into the broadcasting centre and held the personnel there hostage. Emergency measures had been taken following their capture. The persons concerned had had access to lawyers, although discretion had been maintained for a certain period in order to find the persons' accomplices. Legal provisions relating to article 11 of the Covenant were under review and would be repealed or amended as appropriate. The judiciary itself had also recognized that the ordinances in question were irrelevant and inconsistent with the Covenant and the Constitution. The practice of non-military national service dated back to the time of the literacy campaigns in the 1970s and 1980s, for which there had been insufficient teachers. The Government had therefore decided to mobilize young

men and women with the necessary level of education and to combine literacy work, for which they received payment, with their military service. Subsequently, the concept of national service had been extended, as many young people had wanted to undertake tasks other than teaching and had been offered the possibility of being appointed to enterprises or administrative departments as assistants receiving a token salary.

Right to a fair trial

547. With regard to that issue, members of the Committee wished to know whether any progress had been achieved since the submission of the report in respect of measures designed to improve the system of justice described in paragraph 173 of the report. In addition, further information was requested regarding the criteria applicable to the qualifications of the seven members of the Constitutional High Court; on the new system for reviewing judicial decisions; and on the age of criminal responsibility.

548. In his reply, the representative of the State party said that the number of lawyers had risen considerably and that funding for the Ministry of Justice and the judicial administration had been increased. Article 89 of the Constitution, which had often been criticized for the powers that it conferred on the President in regard to the appointments to the Constitutional High Court, had become obsolete and had been replaced by a new provision. Under that provision, membership of that court had been modified so as to ensure that presidential appointees did not constitute a majority. There were a few centres for the re-education of juvenile delinquents. The age of criminal majority was set at 18.

Freedom of movement and expulsion of aliens

549. With reference to that issue, members of the Committee wished to know what obligations had to be satisfied by an alien, pursuant to article 21 of Ordinance No. 62-041 of 19 September 1962, in choosing his residence, and whether there was a possibility of an appeal to the courts against an expulsion order. In addition, members asked whether, in the context of the legal reform process, the bringing of cases to the Committee under the Optional Protocol would no longer be considered as legitimate grounds for the expulsion of an alien or for the punishment of a national.

550. In his reply, the representative of the State party said that aliens enjoyed freedom of movement and freedom to reside in Madagascar, provided that they were not the subject of an expulsion order. They were obliged to declare their residence to the authorities of the locality in which they settled and could lodge complaints or appeals with the administrative division of the Supreme Court in cases of denial of rights or expulsion. Appeals against expulsion orders were heard by an ad hoc commission, composed of a magistrate and representatives of the police and the administrative authorities.

551. Referring to the specific case involving a correspondent of a non-governmental organization who had lodged a complaint before the Committee, the representative explained that the expulsion in 1983 had occurred because of that individual's political activities and not for his other actions. As part of the revision of the Constitution that was under way, full freedoms, including the right of assembly and the right to engage in political

activities, would be guaranteed under the law. However, the Malagasy State would continue to defend itself against what were deemed to be attempts at destabilization and subversion of the social order.

Right to privacy

552. In connection with that issue, members of the Committee wished to know under which circumstances and by whom telephone-tapping or control of the mail could be authorized; whether there had been any allegations of unlawful interference during the period covered by the report with privacy in general and, in particular, with home and correspondence and, if so, how such complaints had been dealt with.

553. In his reply, the representative of the State party said that strict respect for privacy and the inviolability of correspondence were provided for by the Constitution and that telephone-tapping could only be authorized by an examining magistrate in the course of investigations.

Freedom of opinion and expression; prohibition of propaganda for war and of incitement to national, racial or religious hatred

554. With regard to those issues, members of the Committee requested clarification of the reference in the report to "political prisoners" and of the offences and circumstances relating to their imprisonment, and wished to receive information on current legal guarantees with respect to freedom of the press and on their implementation. They also wished to know how the state monopoly on radio and television affected freedom of expression; how the requirement for the exercise of freedom of expression "in conformity with the objective of the Revolution", as provided by article 28 of the Constitution, had actually been addressed in law and practice; whether there had been any adverse consequences for those not observing this limitation; what limits were imposed on the enjoyment of freedom of opinion and expression by the need to ensure due respect for the person of the Head of State and state institutions; and whether, notwithstanding the abolition of censorship, there had been any seizures or confiscations of books, newspapers or other publications. In addition, clarification was requested of the apparently large number of prosecutions and convictions for libel and slander.

555. In his reply, the representative of the State party emphasized that there were currently no political prisoners in Madagascar and that, since the ending of the state of emergency, a series of measures had progressively restored freedom of the press. There had in the past been strict control over printed matter imported from abroad, and obscene and pornographic material had systematically been confiscated. In that regard, provisions regarding statutory deposit of publications as well as all forms of press censorship had now been abolished. The state monopoly on radio and television was currently under thorough review and a private company was being set up to produce programmes independently from the State, the principal concern being to make radio and television profitable operations independent of all political interests. Many private radio and television stations were already functioning, and broad access to television by satellite had, in fact, eliminated the last vestiges of state monopoly. Under the new press law, insulting statements concerning the Head of State would no longer be a criminal offence.

Freedom of assembly and association and the right to participate in the conduct of public affairs

556. In connection with those issues, members of the Committee wished to receive information on progress made in efforts aimed at greater trade union freedom; on current efforts to liberalize political life by introducing a multi-party system; and on the existing political parties. They asked how political parties were formed and registered; what legal requirements related to the right to vote or to be elected; and how the decentralization of communities had promoted the rights under article 25 of the Covenant. They also asked what the term "revolutionary organizations" meant in Malagasy law; whether trade unions and non-governmental organizations were now regarded as such organizations; for what reasons an association could be dissolved and what machinery had been set up to prevent abuses in that regard; what conditions and restrictions were imposed by law on the exercise of the right to strike; whether changes had been made in the ways public officials could exercise the right to form trade unions in order to bring them into line with the ILO Convention concerning Freedom of Association and Protection of the Right to Organise; and why seamen did not enjoy freedom of association. Further information was also requested on the rights of workers who were not members of one of the trade unions belonging to the National Front.

557. In his reply, the representative of the State party stressed that one of the purposes of the promulgation of the 1975 Constitution had been to mobilize the population and encourage it to play a more active role in the conduct of the country's affairs. That had led to the establishment of decentralized communities and "revolutionary organizations" composed of political and trade union organizations. The planned rationalization of the activities of the seven main political groups that had adopted the Charter of the Malagasy Socialist Revolution had nevertheless not yielded the expected results and, in 1989, the National Front had broken apart. Since then, the law relating to trade union and political bodies had been completely changed and the requirement that trade unions had to be affiliated with a member party of the National Front had been eliminated. The procedures, under the 1975 Constitution, governing the establishment and activities of political parties had also gradually been replaced by less strict requirements. There were now 33 political groups of varying importance. According to a constitutional draft amendment, all Malagasy citizens without distinction were eligible to vote and to be elected, the voting age being 18. The establishment of the decentralized communities had created a virtually permanent electoral process at all levels and had been an incomparable school for civic and political education. A debate was now under way on the redefinition of the powers to be granted to these bodies.

558. Trade unions were powerful forces in Madagascar and, since 1975, dialogue and negotiation had been given priority over confrontation. In addition, the earlier provisions relating to trade union rights had been abolished and the free exercise of the right to strike had been explicitly recognized in the new draft article 23 of the Constitution and guaranteed by legal decisions. In the minds of the lawmakers, the restrictions which might be imposed related to the need to maintain public order and guarantee the security of the State. Many trade unions had resorted to strikes in connection with the current intensive activities, which gave them an opportunity to express their grievances concerning wages and conditions of work. Many Malagasy sailors

worked on foreign vessels, and the question of their trade union rights therefore had to be considered at the international level.

Protection of the family and children

559. With regard to that issue, members of the Committee asked what further progress had been achieved, if any, since the submission of the report, in enacting legislation to ensure an equal share of responsibilities, duties and rights between spouses; and, in that regard, whether any of the bills mentioned in paragraph 226 of the report had been enacted. Further information was also requested on procedures governing filiation and the granting of Malagasy nationality, particularly in the case of children born of unknown parents, and it was asked whether Madagascar intended to ratify the Convention on the Rights of the Child.

560. In reply to the questions asked, the representative of the State party indicated that there would be no constitutional changes in the law governing the protection of the family and children, which was based on customary specificities and historical facts. The provisions relating to the sharing of community property had been amended by an act of 20 July 1990, which established equality between the spouses. The idea of the husband as head of household was also disappearing in Malagasy law. Madagascar, a country which had a very young population and which therefore attached a great deal of importance to the rights of the child, had signed the Convention on the Rights of the Child and the Convention relating to the Status of Stateless Persons. The criteria used to determine the nationality of a child born of unknown parents might seem arbitrary, but they were based on an old tradition whereby the members of grass-roots communities were chosen by co-optation; in such cases, the judge requested the views of the community where the child lived before deciding whether or not to give it Malagasy nationality. Madagascar, a country of transit for many Asian immigrants, could not consider the possibility of giving Malagasy nationality to all children born on its soil.

Rights of persons belonging to minorities

561. With reference to that issue, members of the Committee wished to receive information on minorities that had not yet fully succeeded in taking their place in the Malagasy nation. They also asked what the term "minority" meant in Malagasy law; whether the authorities of that country knew about the "threshold of tolerance" concept; and whether assistance was given to persons in Madagascar who did not speak the official language, particularly in their contacts with the administrative or judicial authorities.

562. In his reply, the representative of the State party stressed that, since Madagascar was a country settled by immigrants, many foreign minorities had been living there for centuries. Those minorities had integrated and had formed the Malagasy nation. The influence of the European, Arab/Muslim, Asian, Chinese, African and Indonesian communities varied from region to region, but it was still strong, particularly in the economic field. With the exception of regrettable incidents that had taken place against Indian/Pakistanis and the Comorian minority in 1976, the number of foreigners did not give rise to any real problems in Madagascar, and there was thus no need for the "threshold of tolerance" concept. Any member of a minority who had Malagasy nationality was fully integrated into society. The members of

foreign minorities did not take part in the political life of the country, but they had their own schools and freedom to practise their religion and, in some cases, the State gave them subsidies for instruction in their language.

Concluding observations

563. Members of the Committee welcomed the quality of the report, which, although it had been late, was in keeping with the general guidelines concerning the form and contents of reports (CCPR/C/20), and thanked the Government for its observations (CCPR/C/40) on the Committee's general comment 13 (21) relating to article 14. They also stressed that the dialogue between the Committee and the Malagasy delegation had been particularly constructive, since the delegation had endeavoured to reply frankly to the questions asked by the members of the Committee without trying to conceal problems. The clemency that had been shown with regard to prison sentences and the various legislative reforms that had already been undertaken were signs of progress in the protection of human rights. It was nevertheless noted that structural readjustment policies had had a considerable impact on the implementation of the rights guaranteed by the Covenant.

564. It was pointed out that the current reform of the Constitution provided a good opportunity to give the Covenant a prominent place in Malagasy law and to provide for effective remedies so that citizens who considered that their rights under the Covenant had been violated could invoke that instrument in the courts. Such a reform had also provided an opportunity to reorganize the judiciary regulations in order fully to guarantee the independence of the judiciary in relation to the other powers, to eliminate courts of special jurisdiction and to bring before the ordinary courts cases which had been referred to them. Some concerns were expressed with regard, for example, to conditions of detention resulting from prison overcrowding; the local authorities' apparent lack of control over thefts of cattle and the resulting desire for retaliation; the duration of pre-trial detention; the exercise of trade union rights; the granting of legislative powers to the executive; the question of political prisoners; and, in general, the implementation of articles 6, 7, 9, 10, 11 and 14 of the Covenant.

565. The representative of the State party assured the members of the Committee that the comments that had been made would be transmitted to the Government and stressed the importance his country attached to the type of technical assistance for training that the United Nations Centre for Human Rights had given it on a number of occasions.

566. In concluding the consideration of the second periodic report of Madagascar, the Chairman thanked the Malagasy delegation for its spirit of cooperation and its frank replies to the questions asked by the members of the Committee. He expressed the hope that all the Committee's comments and suggestions could be transmitted to the competent authorities and, in particular, to the legislative body that was carrying out the reform of the Constitution. In that connection, he stressed that one way of removing any ambiguity about the primacy of the provisions of the Covenant over national laws would be to incorporate the Covenant in national legislation.

Jordan

567. The Committee considered the second periodic report of Jordan (CCPR/C/46/Add.4) at its 1077th to 1079th meetings, on 17 and 18 July 1991 (see CCPR/C/SR.1077-1079).

568. The report was introduced by the representative of the State party, who stated that democracy had been strengthened as a result of the general elections held in 1989, in which candidates of the four major political movements - Islamic, conservative, left-wing and nationalist - had taken part. During the elections, women had been able to stand as candidates under the same conditions as men. The Jordanian people had thus been able to elect their representatives freely and under conditions of complete equality. In order to strengthen the principles of democracy and political pluralism that characterized Jordanian society, His Majesty King Hussein had issued directives to set up a Royal Committee for the protection of the rights set forth in the National Charter, which itself stressed the need to protect all civil, political, social and cultural rights and enshrined the concepts of the rule of law and of political pluralism. The Jordanian system provided full legal and administrative safeguards for respect for human rights and fundamental freedoms.

569. The representative of the State party also informed the Committee that the state of emergency had been suspended by royal decision on 7 July 1991, in order to strengthen those democratic principles, and that a number of bills on matters that included political parties, elections and publications would shortly be considered by the Jordanian Parliament.

Constitutional and legal framework within which the Covenant is implemented

570. With regard to that issue, members of the Committee wished to know whether the statement that the Jordanian courts gave international conventions precedence over domestic legislation "unless public order would be jeopardized thereby" could apply to the Covenant; whether the Covenant's provisions could be invoked before the courts; whether a court could declare a law unconstitutional on grounds that it was contrary to the Covenant; what difficulties and factors that might possibly hinder the Covenant's implementation had been identified; and, in particular, what bearing the recent armed conflict in the region had had on the Covenant's implementation.

571. Members of the Committee, having noted that the adoption of the National Charter represented a genuine step forward in respect for human rights and democracy, asked for further information on the document's legal status and on the bill, currently before Parliament, intended to amend the 1953 Act relating to communist ideology. With reference to unwritten laws, including tribal laws, authorizing certain practices which could give rise to innocent victims, they asked whether the Government was taking steps to end the application of such of those laws as would run counter to the principles set forth in the Covenant. Some members of the Committee also asked whether the Jordanian Government was planning to repeal the Defence Act, in force since 1935, or at least to limit its application; what the composition of civil courts was; what the special courts were; how judges were recruited and what were the conditions in which they performed their duties, the grounds on which they could be dismissed and the criteria which governed their promotion; what

exactly were the rules of the religious law applied by the Shariah courts; and whether corporal punishment stipulated by the law was applied. They also requested further details about the conduct of the 1989 elections and asked whether there had been any specific cases in which the Covenant's provisions had in fact been applied by the Jordanian courts.

572. The representative of the State party, replying to the questions raised, explained that international conventions took precedence over national legislation except when the regime was threatened, such as, for example, in the case of a state of emergency or when an exceptional danger jeopardized the nation's future. That restriction did not apply in the case of natural disasters. At the present time, there was no court in Jordan with the power to rule on the constitutionality of a law, but it had been decided to establish a constitutional court. No difficulty had been encountered in domestic application of the Covenant; factors which had hindered the instrument's implementation had been beyond Jordan's control and related essentially to the region's political instability. The recent conflict concerning Kuwait had likewise given rise to difficulties in that regard.

573. With regard to the dissolution of the Chamber of Deputies, the representative said that the action had been determined by the country's historical evolution, including the fact that in 1967 the West Bank, which formed part of the Kingdom, had been occupied. Following that event, the Chamber of Deputies had been dissolved. The restoration of the normal constitutional situation had enabled full general elections to be organized in 1989. The representative assured the Committee that the elections were conducted in an atmosphere of freedom, democracy and openness, in conformity with the law in force. The Chamber of Deputies had enacted, early in 1991, a law repealing the 1953 Act, which forbade the establishment of a Communist party in Jordan; henceforth all political parties could be freely set up in Jordan. The 1939 Defence Act concerned exceptional circumstances and cases; it was applied not throughout Jordanian territory but to clearly demarcated zones. The National Charter, a mark of Jordan's will to progress further towards democracy, had been adopted in June 1991 by representatives of all sectors of the population meeting in a National Congress; it took precedence over the Constitution, to the point that it even evoked the need to amend the latter. The National Charter enunciated all the principles of Jordan's national life, which were founded on full respect for human rights, freedom of expression and the free participation of citizens in the democratic conduct of public affairs.

574. The representative said that, during the Gulf war, Jordan had been confronted with a tragic situation following the influx into its territory of hundreds of thousands of refugees, whom the country had striven to provide with medical care and material assistance as far as its means permitted. During that time, in such a situation of crisis, it was possible that Jordan had departed from one or two of the Covenant's provisions in some areas.

575. Referring to the implementation of unwritten laws and to customs such as tribal vengeance, the representative affirmed that the latter custom had ceased, but that it would take a few years to achieve the level of education required to guarantee the primacy of written law. The Ministry of the Interior was endeavouring to restrict undesirable practices. The National Charter also recognized that problem and referred to the need to make legal provisions more specific and to abandon tribal customs.

State of emergency

576. With regard to this issue, members of the Committee asked whether the administrative regulations promulgated under the state of emergency were in conformity with article 4, paragraph 2, of the Covenant; what the maximum period was for which the state of emergency could be declared and what machinery there was for extending it or placing limitations on it; and what consideration was being given to complying with article 4, paragraph 3, of the Covenant relating to the notification by States parties of a state of emergency.

577. Members of the Committee pointed out that the announcement of the suspension of the state of emergency was very good news and also asked what remedies were available to Jordanian citizens in the courts when the state of emergency was in force; what the specific rights were the exercise of which had been restricted by the state of emergency and how the enjoyment of rights specifically recognized by the Covenant had been affected; and what distinction was made in Jordanian legislation between the state of emergency and martial law. In that connection, they pointed out that only martial law, which had been in force since December 1989, had been lifted in practice, by decree, and that the emergency legislation was actually still being applied, with the result that the Jordanian Government continued to derogate from certain provisions of the Covenant.

578. In reply to the questions asked, the representative of the State party said that the state of emergency had been proclaimed in 1967 during the war between Israel and the Arab countries. In those circumstances, the Jordanian Government had had to promulgate the state of emergency with martial law. He recalled that martial law had been suspended ("frozen") since 1989 pending the promulgation of the order for its abrogation, which had subsequently been adopted by the second Royal Decree of 7 July 1991. He explained the difference between martial law and the Defence Act, noting in particular that the latter had been adopted as a result of the various stages of the ordinary constitutional procedure and that it was in no way an emergency law. The persons who were still in detention after the state of emergency had been lifted were persons who had been found guilty of ordinary crimes. At present, no one was in detention because of his membership in a particular party or political organization. With regard to notification, he said that the Secretary-General and the United Nations as a whole were aware of the situation, as demonstrated by the adoption by the Security Council of resolutions 242 (1967) and 338 (1973).

Non-discrimination and equality of the sexes

579. In this connection, members of the Committee asked for examples of any laws or regulations specifically prohibiting discrimination and providing appropriate penalties; for comments on whether special difficulties were being encountered in ensuring respect for equality between men and women; for information on whether any specific remedies were available to a woman who claimed to have been a victim of discrimination and, in that connection, on whether there had been any cases where relief had been sought and, if so, with what results; and for clarifications concerning the basis for the different treatment under Jordanian law of men and women. They also requested current data on the number of women in public office, the liberal professions, senior

ranks of the civil service and private business; recent data on the proportion of women receiving primary, secondary and higher education; and information on how the rights of aliens were restricted as compared with those of citizens.

580. Members of the Committee also pointed out that sex was not included as one of the possible grounds for discrimination listed in article 6 (a) of the Jordanian Constitution, although it was referred to in article 3 of the Covenant, and they requested clarifications in that regard. They asked about the nature of the dangerous activities women were prohibited from engaging in under article 46 of the Jordanian Labour Act; whether men and women were equal in respect of the division of community property and the custody of children; and whether boys and girls had the same rights in relation to succession.

581. The representative of the State party said that article 6 (a) of the Constitution prohibited any discrimination between Jordanians, who were equal before the law in respect of rights and duties, and that the same terms were used in the 1960 Penal Code. The Jordanian Government did not have any difficulty in ensuring equality between men and women. He stated that equality between Jordanian citizens was guaranteed and that women had always taken part and continued to take part in economic, social and cultural life. There were women in the upper house of Parliament, and they played a particularly important role in education. There were nearly as many women as men in civil service posts and in the private sector. In schools and universities, there were equal numbers of students of both sexes.

582. With regard to nationality, he explained that Jordan applied jus sanguinis and that all children of Jordanian citizens were Jordanian, wherever they might have been born. The child of a Jordanian woman and a father of unknown nationality was also Jordanian. The representative indicated that the only constraints on the rights of aliens were political in nature and they related to the right to enter and leave the territory, which was applied according to the principle of reciprocity.

583. Article 46 of Labour Act No. 21 was in the interest of women. Matters of civil status relating to such matters as succession and inheritance, marriage and divorce were subject to the jurisdiction of religious tribunals in accordance with the belief of the individual.

Right to life

584. With reference to that issue, members of the Committee asked whether any further executions had been carried out since the submission of the report; how the right of persons sentenced to death to seek pardon or commutation of the sentence, pursuant to article 6, paragraph 4, of the Covenant, was ensured; in what way a person sentenced by a military court could become eligible for a special pardon; and what rules and regulations governed the use of firearms by the police and what measures had been taken to prevent the recurrence of violations of these rules and regulations, if any. They also wished to know how the provision in article 17, paragraph 2, of the Penal Code, stipulating that the death penalty would be commuted to hard labour for life in the case of pregnant women, was carried out in practice.

585. Additionally, members wished to know whether any death sentence had been passed by the martial law courts during the period 1990-1991 and wished to

have explanations concerning five executions that were to be carried out in the current year on the basis of sentences by the martial law courts. In this respect, they observed that the Government of Jordan, in its desire to move forward on human rights, might wish to review the implications of such actions. They also observed that the Penal Code provided for the death penalty for a large group of offences and asked whether the abrogation of martial law had any effect on reducing the number of offences carrying the death penalty.

586. The representative of the reporting State pointed out that the martial law directives had been abrogated, and no further cases could be referred to the martial law courts. He said that while he personally favoured abolition of the death penalty, the checks and controls which surrounded its imposition in Jordan were comparable to those in other countries where it had not been abolished. The possibility of petitioning the King for a special pardon existed for all those sentenced to death, except when their crime had endangered the security of the State. The five death sentences had been imposed on persons who had committed specific crimes for which death was the punishment under the Penal Code.

587. The representative explained that Public Order Act No. 33 of 1965 provided that where arms were used improperly in cases involving security agents, the offenders were tried by special police tribunal; that the death penalty was never applied in respect of pregnant women but was commuted to hard labour for life; that the premeditated murder of a relative was regarded as a particularly heinous capital crime; and that no penalties whatsoever were imposed for the holding of political beliefs.

Liberty and security of the person

588. In connection with that issue, members of the Committee wished to know what the maximum period of pre-trial detention was in law and practice; in what cases, apart from espionage, a person could be kept in solitary confinement and whether this excluded visits from the detainee's lawyer; and what the criteria were for declaring that a person was suffering from a mental disorder that might induce him to disturb public order, what authority was responsible for making such a declaration, and what remedies were available. They also asked whether the denial of the possibility of appeal against the lawfulness of the arrest of persons accused of certain crimes, such as murder, was in conformity with article 9, paragraph 4, of the Covenant; how the enforceable right to compensation provided for in article 9, paragraph 5, of the Covenant was ensured; and how soon after arrest a person could contact a lawyer and how quickly after arrest a person's family was informed.

589. In addition, members wished to know what guarantees the law offered against abuses of the state of emergency regulations relating to the arrest of persons suffering from mental disorders; whether any form of legal aid was available to persons placed in institutions; whether legal or medical supervision was exercised in cases of such detention; and whether there was any possibility of appeal against certification. Members also wished to have more information concerning administrative detention in Jordan and, in particular, on the new legislation that was being prepared on that subject. They also wished to know whether detainees or prisoners had the right to

complain at any time to others than the warden of the prison, and whether it was possible for independent visitors to receive complaints in places of detention.

590. The representative of the State party said that the maximum period of pre-trial detention was normally five days. Solitary confinement was only imposed in cases of espionage or where the person concerned constituted a danger to the security of the State or to other persons. Except in the case of espionage, all accused persons and detainees could contact a lawyer or members of their family after arrest. Nothing in law prevented citizens from suing for damages as a result of unlawful arrest or from obtaining compensation. A committee existed to protect the interests of prisoners, to inspect detention centres and to hear complaints. Officials of the Public Prosecutor's Office and representatives of the Chamber of Deputies, as well as delegates from bodies such as Amnesty International, had the possibility to ascertain the conditions under which persons were held in detention.

591. Administrative detention was reserved for very special circumstances, for example when there was a perceived danger to others. Thus, when a murder had been committed, persons likely to engage in acts of vengeance could be taken into preventive custody for a period not exceeding five days. House arrest, the restriction of freedom of movement or preventive detention could also be resorted to when information had been received concerning the preparation of a crime. The draft Law on State Security had been examined by the Chamber of Deputies and was currently before the Senate. At the present time, there were no political detainees in Jordan. Cases involving persons who were mentally ill were considered by a commission of medical specialists who were responsible for determining whether a person was suffering from a mental disorder that might induce him to disturb public order. If a crime had been committed, a lawyer was appointed and the responsibility of the person involved for his acts was investigated. Such cases called for close collaboration between the medical and legal professions.

Treatment of prisoners and other detainees

592. With regard to that issue, members of the Committee wished to know whether any restrictions were placed on the right of prisoners to receive visits and to maintain contacts with the outside world and to what extent the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with. They also sought information on the conditions and duration of solitary confinement and on any complaints received about ill-treatment of detainees, and about measures that had been taken to investigate complaints and punish those found guilty. In addition, members asked whether corporal punishment was prohibited under the new law and what provision had been made for the rehabilitation and retraining of prisoners.

593. The representative of the State party, in his reply, stated that a high-level committee had visited prisons and found no evidence of torture or ill-treatment. There were no legal restrictions on prisoners' visits, except where espionage and mental instability of detainees were involved. No discrimination was practised in regard to detention in particular centres. He further indicated that the Government, pursuing the path of reform, now referred to prisons as rehabilitation or correction centres where the emphasis

was on activities and training which would be of use to prisoners after their release. After the "freezing" of martial law, no persons had been detained on political grounds.

Right to fair trial

594. With reference to that issue, members of the Committee sought further information on the relevant provisions of law governing the appointment and dismissal of judges by royal decree; on whether procedures applied in the military courts were consistent with the guarantees laid down in article 14 of the Covenant, particularly in relation to the right of appeal; on the grounds for prohibiting certain categories of persons from attending criminal trials; and on schemes for legal aid and assistance as well as on the organization of the legal profession.

595. Members also asked whether there were any provisons for the victim of a miscarriage of justice to obtain compensation in accordance with article 14 (b) of the Covenant; what the procedure was for the removal of judges and whether the Commission responsible for the appointment and removal of judges acted at its own discretion or on some statutory basis; and whether Jordan was planning to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

596. The representative of the State party stated that the applicants for the post of judge sat a competitive examination and that properly qualified candidates were appointed in the same way as in other services. Judges of the Supreme Court could not be dismissed by the executive, were obliged to retire at the age of 72 and could be brought before the Supreme Council of Judges on disciplinary grounds in the event of serious misconduct. The Law on the Independence of the judiciary governed the establishment of a commission on removal of judges and laid down the rules under which it operated. Martial law courts had been provisional organs of justice, which had been dismantled after the abrogation of martial law. Prisoners were entitled to sue for pardon to the Military Governor-General or to the King. The courts were responsible for appointing a defence lawyer in cases where the prisoner was not represented. Court sentences were open to review by higher courts in the normal way. All persons had the right to seek redress for damage incurred; that principle was enshrined in article 11 of the Constitution and was also referred to in the Code of Civil Procedure. According to article 125 of the Constitution, any person taking a legal decision (even under martial law) was held to be responsible for the consequences of his act.

597. Under existing Jordanian law, torture was a punishable offence and Jordan intended to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Freedom of movement and expulsion of aliens

598. With reference to that issue, members of the Committee asked for further information on the law and practice in respect of freedom of movement and regarding the possibilities of appeal against expulsion and provisional detention. They also wished to know whether the privileges and immunities specified in articles 29 and 30 of Act No. 24 applied to diplomats in Jordan and requested clarification with respect to the employment of foreigners.

599. The representative of the State party said, in his reply, that Jordan had permitted very large numbers of aliens to enter and to leave the country on the basis of, and occasionally going well beyond, the principle of reciprocity. Under the law, any alien was entitled to appeal against an expulsion order, and an expelled person was even entitled to seek redress while present on foreign soil. Jordan was ready and willing to extend all facilities to foreigners and, during the Gulf crisis, had demonstrated that willingness by welcoming over 1 million refugees from Iraq and Kuwait, to whom extended visas had been granted and for whom humanitarian facilities had been provided. Jordan was a member of the Arab League and as such was bound to accord precedence to the employment of Arab professionals and experts.

Right to privacy

600. With respect to that issue, members of the Committee wished to have more information on the circumstances prescribed by law in which postal and telegraphic correspondence and telephonic communications might be seized or censored, and on the compatibility of such provisions with article 17 of the Covenant. In addition, they wished to know whether there was any judicial control over the actions of the public prosecutor and whether the police were permitted to use secret microphones in surveillance operations.

601. The representative of the State, in his response, said that telephonic conversations could be monitored and postal and telegraphic correspondence seized only where the public prosecutor considered it necessary to do so for the purpose of investigating a crime.

Freedom of thought, conscience and religion

602. With reference to that issue, members of the Committee asked for further information on relevant laws and practices including information on religious communities active in Jordan and their organization; on the applicability of Shariah to non-Muslims; and on religious education.

603. The representative of the State party, in his reply, stated that freedom of religion was guaranteed to all citizens in his country. All questions relating to religion were dealt with by religious courts. Religious communities were free to carry out their own activities and the Shariah was not imposed on other groups. Religious communities were also entitled to have their own schools.

Freedom of opinion and expression; prohibition of propaganda for war and of incitement to national, racial or religious hatred

604. With reference to that issue, members of the Committee wished to know what limits were imposed by law to article 15 of the Constitution and what was meant by the reference in that article to exercise of control "over the sources of income of newspapers"; whether there had been any cases of arrest and detention for the expression of political views; whether the Repression of Communism Act No. 31 of 1953 was still in force and what effects that Act had had on the enjoyment of the rights set forth in article 19 of the Covenant; whether there was pre-censorship; whether licensing was still required in order to publish newspapers and, if so, what was the procedure; what formalities had to be fulfilled by foreign correspondents in order to work in Jordan; and whether such correspondents could move about the country freely.

605. The representative of the State party, in his response to the questions asked, said that censorship had been imposed during the state of emergency, but that there had been no cases of persons being arrested or detained for the expression of political views. Jordanian citizens were completely free to express their views, and freedom of the press was fully guaranteed in Jordan. Foreign newspapers could be freely imported into his country, and foreign correspondents had access to a wide range of information.

Freedom of assembly and association

606. On this issue, members of the Committee asked for information about the establishment of political parties since the submission of the report, particularly with regard to parties that had previously been banned, what guarantees there were that citizens could form political parties and what the criteria were for prohibiting the establishment of certain political parties. In addition, members of the Committee wanted to know what the conditions were for organizing a peaceful demonstration.

607. The representative of the State party, in his reply, said that the right in question was fully guaranteed in Jordan. Under the new bill before the Chamber of Deputies, political parties had to be registered with the Ministry of the Interior, and the sole requirement was that their aims and objectives had to be in keeping with the Constitution and the National Charter. He explained that, under the Associations Act, a group of persons wishing to organize a demonstration was required to give the local authorities 24 hours notice.

Protection of the family

608. In connection with this issue, members of the Committee asked for information on the rights and responsibilities of spouses with regard to household and children during marriage and at its dissolution, and information in particular on remaining practical problems, if any, in ensuring effective equality. They also asked for clarification on the subject of the age of criminal responsibility.

609. The representative of the State party said that the rights and responsibilities of spouses were identical in marriage. In the event of divorce, the father was required to pay an allowance for the children, an obligation that was regarded as progressive and of such a kind as to ensure protection of the wife and children. He confirmed that the age of criminal responsibility differed from country to country and that, while seven could be regarded as a very low age, it should be remembered that child delinquents were tried by special proceedings in juvenile courts in Jordan.

Right to participate in the conduct of public affairs

610. With reference to that issue, members of the Committee asked about the actual extent of women's participation in public affairs at the national, regional and municipal levels, and asked for information on the organization of elections at various levels of government. In addition, members of the Committee wished to know whether any movements and parties were considered illegal in Jordan and, if so, what criteria were used to determine whether they were legal or illegal and whether the Islamic movement called the

Liberation Party was still deemed illegal in Jordan. In connection with elections, they asked for details about the new electoral legislation, with an indication of possible restrictions, as well as the division into constituencies. Members also wanted to know whether detainees, whether charged or convicted, had the right to vote.

611. The representative of the State party, in response to the questions asked, said that there were no accurate statistics in Jordan on the percentage of women who participated in the conduct of public affairs, but he assured the Committee that they played a very active part. As to elections, he explained that they were held under the usual rules; in the municipalities and villages, women fully exercised their rights as candidates and as voters. He explained that the new Electoral Act guaranteed respect for international principles in the matter. The Government had embarked on a study of ways and means of giving effect to the Act and was considering, for example, that each citizen should receive an electoral number and should be entered in a register. The new Act would give the right to vote to all persons everywhere, including persons under arrest for criminal acts, whether charged or convicted. Since the latest elections, in 1989, no organization or association with aims that were in keeping with the Constitution and the National Charter had been declared illegal. The Islamic Liberation Party, which covered various extremist religious groups, could (as could all parties), apply to the Ministry of the Interior to be entered in the register of political organizations, an application that would be granted if their aims were in conformity with the Constitution.

Rights of persons belonging to minorities

612. On this issue, members of the Committee asked for information on the demographic composition of the Jordanian population. They also asked what the status of Jordanian citizens of Palestinian origin was and whether they were considered as Jordanians or chiefly as Palestinians.

613. The representative of the State party, in response to questions, said that the Jordanian population was more than 93 per cent Muslim, while the remainder were Christian. Each community had its own courts, which tried cases specific to each community. Under the new electoral provisions, the Christian minority could obtain seats in Parliament. Again, under the Jordanian Nationality Act, any citizen who had legally been naturalized was Jordanian, with all the rights and obligations involved, irrespective of the place of origin.

Concluding observations

614. Members of the Committee thanked the representatives of the State party for their readiness to cooperate with the Committee and welcomed the recent progress in the field of human rights in Jordan, as was demonstrated more particularly by the adoption of the National Charter, which had been elaborated by representatives from the whole political spectrum in Jordan and hence was a work of undeniable unity. Members also noted that the trend in Jordan was towards abolition of the regulations applied under martial law and that new bills had been submitted to the Chamber of Deputies. Members also pointed out that despite the period of profound political and social change,

the Hashemite Kingdom of Jordan had not failed to submit its second periodic report and had sent representatives to the Committee.

615. At the same time, members of the Committee expressed concern about the broad powers conferred on the special courts; the fact that it was impossible to appeal against judgements by those courts; the excessive number of categories of offences referred to them; and the far too frequent use of administrative detention. They pointed out that a number of questions had not been answered, which impeded the Committee in its efforts to obtain a proper grasp of the real situation prevailing in Jordan. Consequently, they emphasized that the question of inequalities between the sexes should be studied in depth; that the number of offences involving the death sentence could be reviewed; that members of the police and the army could be better trained in respect for human rights; and that the treatment of detainees and conditions of imprisonment could be improved. They also hoped that the Jordanian authorities would look into the questions of an independent judiciary; freedom of expression, more particularly on television; and the age of criminal responsibility.

616. Members of the Committee pointed out that under article 4 of the Covenant, a State party using the right of derogation was required to inform the Secretary-General immediately, which would enable the Committee to gain an accurate idea of the provisions of the Covenant derogated from by the State party and the reasons for the derogations. They urged the Jordanian authorities not to execute persons sentenced to death under the emergency laws. They considered that if real progress was to be made in respect for human rights, Jordan should engage in an overall review of its legislation, in the light of the provisions of the Covenant.

617. On completion of the consideration of the second periodic report by the Hashemite Kingdom of Jordan, the Chairman expressed the hope that the Jordanian delegation would convey to its Government the Committee's observations for the purposes of preparing the third periodic report, which was to be submitted shortly.

Iraq

618. The Committee considered the third periodic report of Iraq (CCPR/C/64/Add.6) at its 1080th to 1082nd meetings held on 18 and 19 July 1991 (see CCPR/C/SR.1080-1082).

619. Paragraphs 619 to 655 below reflect the Committee's consideration of the portion of the third periodic report of Iraq relating to articles 6, 7, 9 and 27 of the Covenant. Owing to the lack of time, the consideration of the remaining portion of Iraq's report was deferred by the Committee to its forty-third session.

620. The report was introduced by the representative of Iraq, who stressed his Government's willingness to pursue a frank and constructive dialogue with all United Nations bodies concerned with human rights, and especially with the Committee in its efforts to enhance the implementation of the Covenant.

621. The representative said that after the cease-fire had ended the armed conflicts in which Iraq had been recently involved, his country had adopted measures to enable citizens to exercise their rights and freedoms without discrimination. Those measures included the dissolution of the Revolutionary Court in favour of the ordinary courts, the lifting of travel restrictions and a new law on the freedom of political parties, which had just been adopted by the National Assembly. The Iraqi population had suffered heavily as a result of the destruction caused by the war of January-February 1991 and the economic sanctions applied by the international community to Iraq. It was now incumbent on the international community, which had been responsible for imposing the sanctions, to cooperate with Iraq in creating conditions for the full exercise of human rights by the Iraqi people.

622. Referring to the Committee's special request for information on the application of articles 6, 7, 9 and 27 of the Covenant, the representative pointed out that the recent Kuwait crisis had been the subject of several Security Council resolutions, which Iraq had accepted and would be implementing responsibly and with good will. Matters that were still pending before the Security Council could not be regarded as falling within the Committee's competence.

623. Members of the Committee, for their part, observed that by ratifying or acceding to the Covenant, States parties accepted the Committee's competence and could not evade their obligations under that instrument. The Committee had competence to monitor the implementation of the Covenant independently of any other obligations arising from Security Council recommendations and decisions or international instruments other than the Covenant. The Committee was well aware that the situation of Iraq was difficult. However, the root cause of those difficulties was the Iraqi intervention in Kuwait on 2 August 1990 and not the counter-action undertaken by the international community.

624. With regard to the information provided in the report under consideration, the members of the Committee, while welcoming the timely and cooperative response of the Iraqi authorities to their request, expressed the view that the report fell short of the Committee's expectations and did not provide the necessary information, especially on the period preceding the Kuwait crisis.

Right to life

625. With reference to that issue, members of the Committee invited the representative of Iraq to comment on the effect of the events in the region since 2 August 1990 on the discharge by Iraq of its international obligations under article 6 of the Covenant, including its obligation to respect and to ensure that all individuals within its territory and subject to its jurisdiction enjoyed the rights recognized in that article. They also wished to know whether Revolutionary Command Council Decree No. 840 of 1986, prescribing severe penalties for offences against the President, was still in force; how often and for what offences the death penalty had been imposed since the consideration of Iraq's second periodic report; how often the death penalty had been carried out, in particular with respect to minors; what legal remedies were available to persons sentenced to death; whether there had been any violations of the rules and regulations governing the use of firearms by

the police and security forces and, if so, what measures had been taken to prevent their recurrence and what disciplinary and other measures had been taken against those found guilty; whether any investigations had been carried out in respect of alleged disappearances of individuals and killings of persons in the course of military operations by the Iraqi armed forces and, if so, with what results; and what compensation was being made available in respect of casualties and disappearances in Kuwait following the events of 2 August 1990 and for damages resulting from the deliberate setting on fire of oil wells.

626. Recalling also the Committee's concerns about events occurring in Iraq before the Gulf war, which constituted serious violations of the Covenant, particularly of its articles 6 and 14, members of the Committee requested information regarding the reported manufacture of nuclear weapons in Iraq and the alleged use of chemical weapons by the army in 1987 against the population of Halabja and about the current status of Mr. Jan Richtes, a foreigner who had been tried in Iraq in 1987. It was also observed that while the report referred to Iraq's full cooperation with the Special Rapporteur of the Commission on Human Rights on summary or arbitrary executions, it said nothing about the measures the Government had taken to prevent the practice of arbitrary and extrajudicial executions to which the Special Rapporteur had drawn attention. The report was also largely silent about measures adopted to ensure protection of the right to life in connection with the recent "riots", although it was clear that the taking of hostages, the killing of hundreds of civilians in the Kirkuk region or the massive aerial bombardments in the Kurdish sector could not be considered as actions appropriate to dealing with riots. In the foregoing connection, information was requested on disciplinary and judicial measures that had been taken against those responsible for such acts. Concerning the large number of cases identified by the Working Group of the Commission on Human Rights on Enforced or Involuntary Disappearances that had not yet been elucidated, it was also asked whether appropriate investigations were under way.

627. In addition, members wished to know whether the expansion of the "most serious crimes" category under the emergency would be ended; what orders concerning standards of conduct had been issued to the military prior to the entry in Kuwait; what was the fate of persons who had been detained under instructions of the Revolutionary Court and how many death sentences had been imposed by the Court; why Farzad Bazoft and Jalil Mahdi Salek al-Nu'aimi, who were sentenced to death in 1990 by the Revolutionary Court, had not been permitted to lodge appeals; and why the death penalty had been applied to minors in certain cases at the end of 1987.

628. In his reply, the representative of the State party said that Revolutionary Command Council Decree No. 840 of 1986 was still in force but was undergoing review by a high-level committee. Criminal courts were obliged to report to the Public Prosecutor all cases in which the death penalty had been imposed for automatic transmission to the Court of Appeal. Prisoners under sentence could also appeal directly. Death sentences could not be implemented without the issuance of a Decree of the Republic, and sentenced persons also had the right of appeal to the President of the Republic. In the uncertain situation following the end of the Gulf war, Iraq had been obliged to use the armed forces to put down insurrections and maintain the sovereignty

of the State. Disappearances of individuals and killings of persons were mainly the work of rioters. Some persons who had been reported to have disappeared, had in fact fled the country.

629. The representative then expressed regret that comments made by members of the Committee had sometimes been prompted by prejudice or unconfirmed rumours; he drew attention to the effort made by his Government to provide the Committee with information in its report, which had been drafted in accordance with the Committee's decision of 11 April 1991 at a time when the Iraqi authorities were still suffering from the effects of recent events. While he respected the Committee's interpretation of its own competence, he could not provide the information requested concerning the Kuwait crisis because that information was in the possession of the Iraqi Minister for Foreign Affairs, the United Nations Security Council and the International Committee of the Red Cross.

630. The representative stated further that his country's authorities had not envisaged including any new crimes among those punishable by death. He then denied all allegations concerning summary trials or the execution of children in Iraq. Capital punishment was commuted to life imprisonment when the convicted offender was between 18 and 20 years of age, and all Iraqi courts strictly applied the Code of Criminal Procedure.

631. With regard to the cases of involuntary disappearance that had not been cleared up, the representative said that that matter concerned primarily a tribe in northern Iraq composed of more than 2,300 persons who had collaborated with Iran during its occupation of Iraqi territory and who had left the territory with the occupation forces.

632. The representative further denied that the Iraqi armed forces had used chemical weapons against civilians. The availability of appeal to the Court of Cassation in criminal cases made it possible to ensure that sentences were fair and legal; the two persons executed in 1990 to whom the Committee had referred had been sentenced to the death penalty for the crime of espionage. Although the Iraqi people had suffered through the economic blockade imposed on his country, the infant mortality rate in Iraq, particularly among nursing infants, had decreased by 40 per cent and was continuing to decline at the rate of 10 per cent per annum.

Treatment of prisoners and other detainees

633. With regard to that issue, members of the Committee wished to know what sanctions were provided for acts of torture or cruel, inhuman or degrading treatment and how often they had been applied during the reporting period. In this connection, they asked whether there were any independent and impartial procedures under which complaints could be made and investigated about the ill-treatment of individuals by the police, by members of the security forces, or by prison officials. They also requested additional information concerning the role of the representative of the Department of Public Prosecution in investigating complaints of maltreatment or poor health conditions in detention centres.

634. Members of the Committee also wished to know how many cases of torture there had been involving military personnel and members of the security forces

during the period of the report; what legal provisions were applicable to enable victims of torture to obtain compensation, in particular "moral" compensation; whether the instructions given with regard to the actions of the armed and security forces had been obeyed in practice, and whether they expressly prohibited acts of torture.

635. Questions were also raised about the disappearance of 353 Kurds in August 1988 and about the torture and degrading treatment inflicted on Kuwaiti citizens during the Iraqi occupation. In particular, members asked whether Iraq had made provision for any investigations, remedies and compensation in that connection; whether Iraqi prisons were still holding political prisoners; whether the list of all persons currently detained in Iraq would be made public; whether the organizations concerned would have access to court files; and whether detainees could be questioned and examined by physicians.

636. It was pointed out that, during the Committee's consideration of the second periodic report of Iraq, doubts had been expressed as to the soundness of certain provisions included in a list of directives for the security service, and the question had been asked whether those directives were still in force. Members of the Committee also referred to the four judgements concerning acts of torture mentioned in the third periodic report of Iraq and to detailed information on the practice of torture in Iraq furnished by the Special Rapporteur on Torture of the Commission on Human Rights, by Amnesty International and by other international organizations. Such allegations could not be refuted by the Iraqi authorities; the members asked whether all the complaints concerning acts of torture had really been investigated and, if so, with what results. They also asked how many Iraqi soldiers had been tried for rape during the occupation of Kuwait; whether Iraq applied the United Nations Standard Minimum Rules for the Treatment of Prisoners; whether representatives of governmental and non-governmental organizations had been permitted to visit detention centres; and whether any persons had died following torture. They also asked what specific measures had been taken to prevent maltreatment in places of detention; whether Iraqi legislation included any provision enabling the State to take action ex officio in cases of torture; and whether the Iraqi Government would be prepared to conduct impartial investigations with the assistance of international experts.

637. In his reply, the representative of the State party referred to the provisions of the Iraqi Constitution and Penal Code designed to prohibit and punish any act of torture and to the criminal and civil procedures laid down to enable victims of torture to claim moral or material compensation. Investigations were conducted by the courts, which received complaints of torture and which took the necessary steps within their competence against the offenders. The Attorney-General played an essential role: it was his responsibility to institute proceedings on any information he received concerning acts of torture and to follow up the matter until judgement was passed. There were no special rules for the investigation of acts of torture; the procedure was that followed for all other offences, whether committed by police or by prison staff.

638. In addition, directive No. 4 of 1988 required the Department of Public Prosecution to investigate prison conditions in order to verify that they conformed to the regulations. The Department's representative saw to it that physicians visited detention centres. He received complaints from detainees,

whom he met in private and he instituted criminal proceedings against those responsible for ill-treatment or torture.

639. The representative stated that it was virtually impossible to estimate the total number of cases of torture because only those investigated and brought before the courts were officially registered. Torture victims could claim compensation from the State if there was evidence that a police officer had inflicted torture. The names of persons convicted of torture would be made available to international organizations if such a request was made to the competent Iraqi authorities. Clear instructions had been issued to the police and prison services in regard to arrests and detentions. The authority responsible for prisons was the Ministry of Labour and Social Affairs. Qualified experts ensured that standards were maintained.

Liberty and security of the person

640. In connection with that issue, members of the Committee wished to know whether there were any particular legal actions in Iraq that could be taken in cases of detention, such as habeas corpus; how quickly after arrest a person's family was informed; how soon after arrest a person could contact his or her lawyer; and what was the maximum legal period of detention in custody and of pre-trial detention. Clarification was also sought of the actual scope of decisions 103, 105, 109 and 121 of April 1991 and decision 126 of May 1991, particularly the nature of the acts punishable by law, the perpetrators of which were pardoned by successive amnesties, and of the term "indecent assault", used in paragraph 42 of the report. Members also requested statistics concerning the number of persons who left Iraq subsequent to 5 April 1991 and the number that had returned since the enactment of the various amnesty decisions and wished to know, in particular, whether all Kuwaitis taken to Iraq as prisoners after 2 August had been released or accounted for.

641. Members of the Committee also wished to know whether Iraqi law provided for administrative detention and, if so, whether the measure was applied in accordance with article 9 of the Covenant; what authority was responsible for verifying the lawful nature of arrests; and what had been the grounds for placing Ayatollah Syed Abdul Quasim Al-Khoie under house arrest and the legal justification for detaining members of his family and a number of persons who shared his opinions.

642. Members of the Committee deplored the bombing, by the Iraqi army, of Kurds fleeing Iraq and of the homes of certain opponents of the regime. They asked for clarification concerning the effective application of a number of amnesty decisions taken by the Iraqi Government with regard to certain accused persons; the safeguards provided for the protection of opponents of the Iraqi regime; the period of validity of amnesties for accused persons; and the application of the principle of the presumption of innocence in all judicial proceedings, as embodied in the Covenant.

643. In his reply, the representative of the State party referred to the provisions of the Iraqi Constitution and Penal Code concerning the conditions for lawful arrest and the penalties for unlawful arrest. As soon as he was arrested, a person was entitled to contact relatives and his counsel. The maximum period of detention in custody was 24 hours for offences punishable by

three years' imprisonment or less; a detainee could be released on bail or surety. The period of detention in custody could be extended by the court. Bail was not granted where crimes which carried the death penalty were involved. Appeals against all judicial decisions relating to arrest lay with the competent regional criminal court.

644. The representative stated that, during the recent disturbances in Iraq, crimes and other offences punishable under the Penal Code had been committed. Once they had put an end to those disturbances in April 1991, the Iraqi political authorities had set out to strengthen national unity. That had led the legislators to take a number of amnesty decisions, particularly with regard to Iraqi Kurds in the Autonomous Region of Kurdistan who had taken part in the riots. Certain serious crimes had been excluded from those measures. A general amnesty had subsequently been extended to all Iraqi citizens. The expression "indecent assault" covered crimes and other offences of a sexual nature. The majority of Iraqis who had left the country during the events connected with the Gulf war had now returned home and there were only 4,000 people still to be repatriated.

645. In addition, the representative stated that administrative detention existed in Iraq as a precautionary measure under the authority of the Ministry of the Interior. There had been no attacks of civilians by Iraqi airplanes subsequent to the cease-fire.

Rights of persons belonging to minorities

646. Referring to that issue, members of the Committee asked how many Kurds had fled the country and how many had returned to Iraq as a result of agreements sponsored by the United Nations and its agencies. They also wished to receive additional information on the status and functions of the Legislative Council of the Autonomous Region of Kurdistan and on the relationship between that institution and the National Assembly. Information was further requested with regard to ethnic or religious minorities in Iraq and the "positive measures", mentioned in paragraph 76 of the report, taken to enable minorities to exercise their rights without discrimination. It was asked, in particular, whether these minorities were represented in the National Assembly and local governing bodies.

647. In addition, members of the Committee wished to know the extent to which Iraqi Kurds were allowed to enjoy their own culture and to use their own language; how their status compared with the situation of Kurds in other countries; whether the Autonomous Region of Kurdistan had proved to be a workable solution; whether the Iraqi Government had taken any new measures as a result of the resumed dialogue with a delegation of Kurdish parties; what was the status of the negotiations; what the practical effects had been on minorities in Iraq of the constitutional provision establishing Islam as the State religion; whether the recognition of the Kurdish people's rights would include their right to self-determination; and what rights had been recognized as legitimate for other minority groups.

648. Referring to Shiites currently in the marshes, who had been bombed and prevented by brutal means from obtaining assistance, members asked whether the United Nations and Amnesty International would be allowed to have access to them and to assist them. They also wished to know how many members of the

Executive Council, established in 1989, were Kurdish and how many belonged to other groups; to what extent the Council was independent in governing the Autonomous Region; what positive measures had been taken to protect the fundamental rights of Kurdish, Shiite and Assyrian minorities; and what the situation was with regard to holy places in the towns that had been subjected to heavy bombardment.

649. In his reply, the representative stated that he had no precise information on the number of Kurds who had left or had returned to Iraq. However, according to the Office of the United Nations High Commissioner for Refugees, most of those who had left the country had now returned. The Legislative Council of the Autonomous Region of Kurdistan exercised its powers, including legislative decision-making, in accordance with Autonomous Region Act No. 56 of 1980. The Legislative Council and the National Assembly acted independently. The Council was concerned with local matters, while the Assembly dealt with legislation covering all regions. Representatives of Iraqi Kurds were included as Iraqi citizens in the National Assembly. The electoral system in Iraq was based on the equality of all citizens. Minorities had the right to stand as candidates in national elections. No seats in the National Assembly were reserved for any particular minority, and its membership included citizens belonging to all minorities.

650. The representative further stated that the State supported the right of persons belonging to minorities to enjoy their own culture by publishing books and by broadcasting on radio and television in the local languages. The Kurdish language was the official language in the Autonomous Region of Kurdistan, and a major university existed in the region. According to the Iraqi Constitution, Kurds were considered not as a minority but as a people on an equal footing with the Arab people. Members of the Executive and Legislative Councils were elected by free and secret ballot. Negotiations between Kurdish representatives and the authorities in Baghdad were proceeding well and would reach a successful conclusion. Kurds in Iraq had political and cultural rights that did not exist for Kurds in other countries. The Iraqi Constitution enshrined the principle of non-discrimination, and the principle applied to religious matters.

Concluding observations

651. Members of the Committee said that while they had hoped that a constructive dialogue between the Committee and Iraq would be possible, unfortunately that had not proven to be the case. Rather, the representative of the State party had engaged in a kind of monologue or "stonewalling" and had sought constantly to evade certain issues and to avoid responding to the legitimate questions posed by members of the Committee. In the latter connection, they referred to questions they had raised regarding such important issues as disappearances, unlawful executions, including the execution of minors, torture and the existence of political prisoners, which had not received clear replies or had remained unanswered.

652. The report itself appeared largely to be an attempt by the Government to present its views on the Gulf crisis and its aftermath without addressing the real issue, that of Iraq's compliance with the Covenant. It did not cover the entire reporting period from 1 January 1986 nor did it address any human rights violations or issues subsequent to 2 August 1990. In the latter

regard, the State party's claim that the Security Council's involvement with events that had occurred after 2 August 1990 had pre-empted the Committee's competence was clearly indefensible from a legal standpoint. The Security Council's involvement did not in any way absolve Iraq from the need to observe the provisions of the Covenant nor remove from the Committee the mandate entrusted to it under the Covenant for monitoring the implementation of those provisions. Members also disagreed with the implication in the report that the difficult situation concerning human rights in the country was due primarily to the Gulf war and to the sanctions that had been adopted against Iraq by the international community, noting in that connection the existence in Iraq of reliably attested human rights violations, including summary executions and arbitrary detention, well before the invasion of Kuwait on 2 August 1990. The failure of the report to address events in Kuwait after 2 August 1990, given Iraq's clear responsibility under international law for the observance of human rights during its occupation of that country, was a matter of particular concern to the Committee.

653. Members of the Committee also expressed deep concern with regard to the existence in Iraq of special courts, as well as death sentences without any possibility of appeal; the lack of protection of freedom of expression; the situation of the Shiites in the country; and the repressive action of the Government, particularly against the Kurds and the Shiites. Indeed, it was their overall impression that a situation of serious human rights violations that had already been very disturbing in 1987 had persisted and worsened throughout the intervening period.

654. Members of the Committee stressed that their criticisms had but one aim: the safeguarding of the rights and freedoms enshrined in the Covenant for everyone, including all Iraqis whatever their religion or ethnic origin. They expressed satisfaction with the State party's timely compliance with the Committee's request for the submission of the report and with the presence of the representative of the State party during its consideration by the Committee. They hoped that the Government of Iraq would change its attitude in the future by cooperating with the Committee not merely in form but also in substance, so as to allow for a fruitful and frank dialogue.

655. The representative of the State party reaffirmed his Government's desire to cooperate as fully as possible with the Committee even though he could not accept the criticism that inadequate replies had been given to the questions concerning protection of the right to life.

656. In concluding the debate, the Chairman of the Committee recalled that a number of issues concerning the third periodic report of Iraq had not yet been taken up for lack of time and that many questions posed by members had remained unanswered. The consideration of the report would, therefore, be resumed and completed at the next session of the Committee.

IV. GENERAL COMMENTS OF THE COMMITTEE

Work on general comments

657. At its forty-first session, the Committee began discussion of a text updating its general comment on article 7 8/ of the Covenant on the basis of an initial draft prepared by its working group. It considered that general comment at its 1056th, 1070th, 1076th, 1083rd, 1084th and 1088th meetings, during its forty-first and forty-second sessions, on the basis of successive drafts revised by its working group in the light of the comments and proposals advanced by members. The Committee made substantial progress towards finalizing the revised general comment and decided to revert to the matter at its forty-third session.

658. At its 1056th and 1060th meetings, during its forty-first session, the Committee also gave extensive consideration to a text updating its general comment on article 10 8/ of the Covenant submitted by its working group. At its forty-second session, the Committee decided to defer to its forty-third session the consideration of a revised draft submitted by its working group.

V. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

659. Under the Optional Protocol to the International Covenant on Civil and Political Rights, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit written communications to the Human Rights Committee for consideration. Of the 96 States that have ratified or acceded to the Covenant, 55 have accepted the Committee's competence to deal with individual complaints by becoming parties to the Optional Protocol (see annex I, sect. C). Since the Committee's last report to the General Assembly, five States have ratified or acceded to the Optional Protocol: the Czech and Slovak Federal Republic, Malta, Mongolia, Nepal and the Ukrainian Soviet Socialist Republic. No communication can be examined by the Committee if it concerns a State party to the Covenant that is not also party to the Optional Protocol.

A. Progress of work

660. The Committee started its work under the Optional Protocol at its second session in 1977. Since then, 468 communications concerning 36 States parties have been registered for consideration by the Committee, including 50 placed before it at its fortieth to forty-second sessions, covered by the present report.

661. The status of the 468 communications registered for consideration by the Human Rights Committee so far is as follows:

(a) Concluded by views under article 5, paragraph 4, of the Optional Protocol: 119;

(b) Declared inadmissible: 124;

(c) Discontinued or withdrawn: 70;

(d) Declared admissible, but not yet concluded: 46;

(e) Pending at the pre-admissibility stage: 109.

662. In addition, the secretariat of the Committee has several hundred communications on file, in respect of which the authors have been advised that further information would be needed before their communications could be registered for consideration by the Committee. The authors of some 100 further communications have been informed that the Committee does not intend to consider their cases, as they fall clearly outside the scope of the Covenant or appear to be unfounded or frivolous.

663. Two volumes containing selected decisions of the Human Rights Committee under the Optional Protocol, from the second to the sixteenth sessions and from the seventeenth to the thirty-second sessions, respectively, have been issued (CCPR/C/OP/1 and CCPR/C/OP/2).

664. During the fortieth to the forty-second sessions, the Committee concluded consideration of nine cases by adopting its views thereon. These are cases Nos. 221/1987 and 323/1988 (Yves Cadoret and Hervé Le Bihan v. France), 226/1987 and 256/1987 (Michael Sawyers and Michael and Desmond McLean v. Jamaica), 229/1987 (Irvine Reynolds v. Jamaica), 253/1987 (Paul Kelly v. Jamaica), 298/1988 and 299/1988 (G. and L. Lindgren et al. v. Sweden) and 327/1988 (Hervé Barzhig v. France).

665. The Committee also concluded consideration of 16 cases by declaring them inadmissible. These are cases Nos. 234/1987 (D.S. v. Jamaica), 254/1987 (W.W. v. Jamaica), 302/1988 (A.H. v. Trinidad and Tobago), 303/1988 (E.B. v. Jamaica), 304/1988 (D.S. v. Jamaica), 310/1988 (M.T. v. Spain), 313/1988 (D.D. v. Jamaica), 315/1988 (R.M. v. Jamaica), 316/1988 (C.A. v. Finland), 341/1988 (Z.P. v. Canada), 354/1989 (L.G. v. Mauritius), 372/1989 (R.W. v. the Netherlands), 389/1989 (I.S. v. Hungary), 409/1990 (E.M. v. France), 413/1990 (A.B. v. Italy) and 419/1990 (O.J. v. Finland).

666. The texts of the views adopted on the nine cases, as well as of the decisions on the 16 cases declared inadmissible, are reproduced in annexes XI and XII. Consideration of six cases was discontinued. Procedural decisions were adopted in a number of pending cases (under rules 86 and 91 of the Committee's rules of procedure or under article 4 of the Optional Protocol). Secretariat action was requested on other pending cases.

B. Growth of the Committee's case-load under the Optional Protocol

667. As the Committee has already stated in previous annual reports, the increased number of States parties to the Optional Protocol and increased public awareness of the Committee's work under the Optional Protocol have led to a substantial growth in the number of communications submitted to it. At the opening of the Committee's forty-second session, there were 158 cases pending. This increased work-load means that the Committee can no longer examine communications as expeditiously as hitherto and highlights the urgent need to reinforce the Secretariat staff. The Human Rights Committee reiterates its request to the Secretary-General to take the necessary steps to ensure a substantial increase in the staff assigned to service the Committee and puts on record that the work under the Optional Protocol has already suffered because of insufficient Secretariat resources.

C. New approaches to examining communications under the Optional Protocol

668. In view of the growing case-load, the Committee has been applying new working methods to enable it to deal more expeditiously with communications under the Optional Protocol.

1. Special Rapporteur on New Communications

669. At its thirty-fifth session, the Committee decided, under rule 91 of its rules of procedure, to designate a Special Rapporteur to process new communications as they were received, i.e. between sessions of the Committee. Mrs. Rosalyn Higgins was so designated for the period of one year. At its thirty-eighth session, the Committee renewed her mandate for an additional year. At its forty-first session, the Committee designated Mr. Rajsoomer Lallah to succeed Mrs. Higgins for the period of one year. Between the relevant sessions, the Special Rapporteur transmitted a number of new communications to the States parties concerned, under rule 91 of the Committee's rules of procedure, requesting information or observations relevant to the question of admissibility. In some cases, the Special Rapporteurs recommended to the Committee that the communications be declared inadmissible without being forwarded to the State party. The terms of reference of the Special Rapporteur on New Communications are reproduced in annex X below.

2. Competence of the Working Group on Communications

670. At its thirty-sixth session, the Committee decided to authorize the Working Group on Communications, consisting of five members, to adopt decisions to declare communications admissible when all the members so agreed. Failing such agreement the Working Group would refer the matter to the Committee. It could also do so whenever it believed that the Committee itself should decide the question of admissibility. While the Working Group could not adopt decisions declaring communications inadmissible, it might make recommendations in that respect to the Committee. Pursuant to those rules, the Working Group on Communications, preceding the fortieth, forty-first and forty-second sessions of the Committee, declared 21 communications admissible.

D. Joinder of communications

671. Pursuant to rule 88, paragraph 2, of the Committee's rules of procedure, the Committee may, if appropriate, decide to deal jointly with two or more communications. During the period covered by this report, the Committee adopted one decision to deal jointly with two communications before declaring them admissible and one decision to deal jointly with two communications that had already been declared admissible.

E. Individual opinions

672. In its work under the Optional Protocol, the Committee strives to reach its decisions by consensus, without resorting to voting. However, pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, members can append their individual opinions to the Committee's views. Pursuant to rule 92, paragraph 3, members can append their individual opinions to the Committee's decisions declaring communications inadmissible.

673. During the sessions covered by the present report, individual opinions were appended to the Committee's views in case No. 253/1987 (Paul Kelly v. Jamaica) and to the Committee's inadmissibility decisions in cases Nos. 302/1989 (A.H. v. Trinidad and Tobago) and 354/1989 (L.G. v. Mauritius).

F. New format of decisions on admissibility and final views

674. From the outset, the format of Committee decisions was relatively simple, consisting of a chronological rendering of the submissions by the authors and States parties, both at the admissibility and merits phases, followed by the Committee's application of the relevant provisions of the Covenant and Optional Protocol. The Committee deemed that this method sometimes led to considerable overlap and a general loss of clarity. For this reason, the Committee considered it appropriate, at its thirty-seventh session, to introduce a new format for decisions, aimed at greater precision and brevity. The new format divides decisions into four parts under these rubrics: the facts as submitted by the author, the complaint, the State party's observations, and issues and proceedings before the Committee. Sometimes additional rubrics are used. The new format has been followed in most of the decisions adopted at the fortieth through forty-second sessions.

G. Issues considered by the Committee

675. For a review of the Committee's work under the Optional Protocol from its second session in 1977 to its thirty-ninth session in 1990, the reader is referred to the Committee's annual reports for 1984 to 1990 which, *inter alia*, contain a summary of the procedural and substantive issues considered by the Committee and of the decisions taken. The full texts of the views adopted by the Committee and of its decisions declaring communications inadmissible under the Optional Protocol have been reproduced regularly in annexes to the Committee's annual reports.

676. The following summary reflects further developments of issues considered during the period covered by the present report.

1. Procedural issues

(a) State party to the Optional Protocol (Optional Protocol, art. 1)

677. Pursuant to article 1 of the Optional Protocol, the Human Rights Committee is competent to examine communications emanating only from individuals subject to the jurisdiction of States parties to the Covenant and Optional Protocol. In case No. 409/1990 the author was a French citizen of Moroccan origin who sought payment by France of a pension he had received from the Algerian Société nationale des chemins de fer algériens (SNCFA) until he left Algeria and settled in France in 1984. The author claimed that, since Algeria had been a part of France until 1962 and the Algerian railroads had been administered by France, he should be paid the same pension as retired French employees of the French railroads. In declaring the communication inadmissible, the Committee stated:

> "With respect to article 1 of the Optional Protocol, the Committee reaffirms that it may only receive and consider communications from individuals subject to the jurisdiction of a State party to the Covenant and Optional Protocol 'who claim to be victims of a violation *by that State party* of any of their rights set forth in the Covenant.' (emphasis added) In this connection, the Committee notes that although the author

> has addressed his complaint against France, his grievances actually relate to the laws and regulations in so far as they govern the retirement practices of the Algerian SNCFA. Although the author has, since his retirement, set up residence in France and is generally subject to French jurisdiction, he does not come within French jurisdiction in respect of his claims to retirement benefits from the Algerian SNCFA. Moreover, the Committee finds that the facts of this communication are materially different from those of communication No. 196/1985, 9/ in which the retired Senegalese soldiers received payments from the French State pursuant to the French Code of Military Pensions, whereas in the instant case E.M.E.H. never received payments from France but rather from the Algerian SNCFA, which also discontinued them. Accordingly, the Committee cannot entertain E.M.E.H.'s communication against France under article 1 of the Optional Protocol." (annex XII, sect. N, para. 3.2)

(b) No claim under article 2 of the Optional Protocol

678. Article 2 of the Optional Protocol provides that "individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration".

679. Although at the admissibility stage an author need not prove the alleged violation, he must submit sufficient evidence in substantiation of his allegation to constitute a *prima facie* case. A "claim" is therefore not just any allegation, but an allegation supported by a certain amount of substantiating evidence. Thus, in cases where the Committee finds that the author has failed to make at least a *prima facie* case before the Committee, justifying further examination on the merits, the Committee has held the communication inadmissible, according to rule 90 (b) of its rules of procedure, as amended at the thirty-sixth session, declaring that the author "has no claim under article 2 of the Optional Protocol".

680. In case No. 302/1988 (A.H. v. Trinidad and Tobago), the author had been convicted of murder and sentenced to death. He claimed to be innocent, alleging irregularities in the trial. In declaring the communication inadmissible, the Committee observed:

> "A careful examination of the author's submissions does not show how the disappearance of the document, referred to as 'I.M.2', could have influenced the court proceedings to such an extent as to raise *prima facie* issues under article 14. Moreover, the author has not sufficiently substantiated his claim that the proceedings suffered from other procedural defects. In this respect, therefore, he has failed to advance a claim under the Covenant within the meaning of article 2 of the Optional Protocol." (annex XII, sect. C, para. 6.2)

(c) Competence of the Committee and incompatibility with the provisions of the Covenant (Optional Protocol, art. 3)

681. In its work under the Optional Protocol the Committee has been circumspect and has avoided extending the scope of its competence beyond what the drafters had intended. For example, in determining whether the provisions of article 14 of the Covenant concerning the minimum guarantees for a fair

trial have been observed, the Committee has consistently avoided becoming a "fourth instance". In declaring communication No. 304/1988 (D.S. v. Jamaica) inadmissible, the Committee observed:

> "With respect to the author's claims of an unfair trial, the Committee observes that it is generally for the appellate courts of States parties to the Covenant and not for the Committee to evaluate facts and evidence placed before domestic courts and to review the interpretation of domestic law by national courts. Similarly, it is for the appellate courts and not for the Committee to review specific instructions to the jury by the judge, unless it is apparent from the author's submission that the instructions to the jury were clearly arbitrary or tantamount to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The author's allegations do not show that the judge's instructions or conduct of the trial suffered from such defects in the present case. In this respect, therefore, the author's claims as submitted do not come within the competence of the Committee and, in that sense, fall outside the scope of protections provided by article 14, paragraph 1, of the Covenant. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol." (annex XII, sect. E, para. 5.2)

682. The Committee also declared case No. 389/1989 (I.S. v. Hungary) inadmissible, noting that the author's claims related primarily to the evaluation of evidence by the Hungarian courts. It reaffirmed that while article 14 of the Covenant guaranteed the right to a fair trial, it was for the appellate courts of States parties to the Covenant to evaluate the facts and the available evidence in a particular case. It further noted that from the information submitted by the author, it had no evidence that the Hungarian courts did not properly evaluate the evidence against the author or that they otherwise acted in ways that would amount to arbitrariness or to a denial of justice. In the circumstances, the Committee concluded that the communication was inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol. (annex XII, sect. M, para. 3.2)

683. Case No. 419/1990 (O.J. v. Finland) concerned the expropriation by the State of certain real estate for the purpose of the construction of a road. In declaring the communication inadmissible, the Committee observed:

> "that the author's claims relate primarily to an alleged violation of her right to property, which she indicates is guaranteed by the Constitution of Finland. The right to property, however, is not protected by the International Covenant on Civil and Political Rights. Thus, since the Committee is only competent to consider allegations of violations of any of the rights protected under the Covenant, the author's allegations with regard to expropriation are inadmissible _ratione materiae_, under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant." (annex XII, sect. P, para. 3.2)

684. Another case turned on the competence of the Committee to examine questions relating to the right of self-determination. In case No. 413/1990 (A.B. _et al_. v. Italy), the authors alleged that the right of self-determination of the people of South Tirol, Italy, had been violated by

numerous acts and decrees adopted by the Italian Parliament. In declaring the communication inadmissible, the Committee observed:

> "With regard to the issue of the authors' standing under the Optional Protocol, the Committee recalls its constant jurisprudence that pursuant to article 1 of the Optional Protocol it can receive and consider communications only if they emanate from individuals who claim that their individual rights have been violated by a State party to the Optional Protocol. While all peoples have the right of self-determination and the right freely to determine their political status, pursue their economic, social and cultural development, and may, for their own ends, freely dispose of their natural wealth and resources, the Committee has already decided that no claim concerning the question of self-determination may be brought under the Optional Protocol. 10/ Thus, the Committee is not required to decide whether the ethno-German population living in South Tirol constitute 'peoples' within the meaning of article 1 of the International Covenant on Civil and Political Rights." (annex XII, sect. O, para. 3.2)

685. Under article 3 of the Optional Protocol, the Committee shall declare inadmissible a claim which it considers to be an abuse of the right of submission. In communication No. 314/1988 (Z.P. v. Canada), the author complained about a violation of his right to adequate time and facilities for the preparation of his defence, although deficiencies in the preparation of the defence were to some degree attributable to himself. The Committee noted that:

> "the first time the author complained about the unavailability of the trial transcript was over two months after being denied leave to appeal by the Supreme Court. In the circumstances, he is estopped from invoking an *ex post facto* violation of his right to adequate time and facilities for the preparation of his defence. The Committee concludes that this part of the communication is inadmissible as an abuse of the right of submission, pursuant to article 3 of the Optional Protocol." (annex XII, sect. J, para. 5.5)

(d) No simultaneous examinations of the same matter (Optional Protocol, art. 5, para. 2 (a))

686. Article 5, paragraph 2 (a), of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. Only the simultaneous examination of a case is precluded, however, and the Committee is, in principle, competent to consider cases that have been examined elsewhere, unless the State party has made a reservation upon ratification of or accession to the Optional Protocol precluding consideration of the same matter. For instance, most European States parties to the Optional Protocol that are also members of the Council of Europe and parties to the European Convention on Human Rights have made such reservations (the Netherlands and Portugal have not). Thus, while the Committee has had to declare inadmissible, on the basis of pertinent reservation, cases examined by the European Commission of Human Rights (e.g., case No. 121/1982, A.M. v. Denmark), it has considered a number of cases submitted against the Netherlands and previously examined by the European Commission (e.g., No. 201/1985, Hendriks v. the Netherlands). During its fortieth session, the

Committee thus examined case No. 372/1989 (R.L.A.W. v. the Netherlands) but declared it inadmissible on other grounds. (annex XII, sect. L, para. 6.2)

(e) The requirement of exhaustion of domestic remedies (Optional Protocol, art. 5, para. 2 (b))

687. Pursuant to article 5, paragraph 2 (b), of the Optional Protocol, the Committee shall not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies. However, the Committee has already established that the rule of exhaustion applies only to the extent that these remedies are effective and available. The State party is required to give "details of the remedies which it submitted that had been available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective" (case No. 4/1977, Torres Ramírez v. Uruguay). The rule also provides that the Committee is not precluded from examining a communication if it is established that the application of the remedies in question is unreasonably prolonged.

688. In several cases concerning Jamaica the Committee had to decide whether a petition for special leave to appeal to the Privy Council was an available remedy for purposes of article 5, paragraph 2 (b), of the Optional Protocol. In declaring communication No. 315/1988 (R.M. v. Jamaica) inadmissible, the Committee observed:

> "with regard to the requirement of exhaustion of domestic remedies, the Committee has taken note of the State party's contention that the communication is inadmissible because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal, pursuant to Section 110 of the Jamaican Constitution. It observes that the author has secured pro bono legal representation from a London law firm for this purpose, after submitting his case to the Human Rights Committee, and that his representative is endeavouring to file a petition for special leave to appeal on his behalf. While expressing concern about the apparent unavailability, so far, of relevant court documents in the case, the Committee does not consider that a petition for special leave to appeal to the Judicial Committee of the Privy Council would be a priori ineffective and as such a remedy that authors need not exhaust before addressing a communication to the Committee. Accordingly, it finds that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met." (annex XII, sect. H, para. 6.3)

689. In this connection, the Committee has had the opportunity to stress that the availability of legal aid is also an important consideration in determining whether domestic remedies can be said to be available and effective. In case No. 315/1988 (R.M. v. Jamaica) the Committee stated:

> "With regard to the practical operation of the system of legal aid in Jamaica, the Committee stresses that article 14, paragraph 3 (d), of the Covenant requires States parties to ensure proper legal assistance to persons accused of criminal offences at all stages of their trial and appeal, including appeals to the Judicial Committee of the Privy Council. In the light of article 6, paragraph 2, of the Covenant it is

> imperative that whenever legal aid is provided, it must be sufficient to ensure that the trial can be conducted fairly." (annex XII, sect. H, para. 6.4)

690. The requirement of exhaustion of domestic remedies applies not only with respect to alleged trial irregularities but also in cases of alleged ill-treatment. The Optional Protocol requires that authors make at least a reasonable effort to denounce the alleged violations to the authorities concerned. In declaring communication No. 302/1988 (A.H. v. Jamaica) inadmissible, the Committee observed:

> "With respect to issues that could arise under article 10 of the Covenant, the Committee notes that the author has not indicated what steps, if any, he has taken to denounce his alleged ill-treatment to the competent prison authorities, and what investigations, if any, have been carried out. Accordingly, the Committee finds that in this respect, the author has failed to exhaust domestic remedies." (annex XII, sect. C, para. 6.3) See also case No. 313/1988, D.D. v. Jamaica. (annex XII, sect. G, para. 5.3)

(f) Inadmissibility ratione temporis

691. As in previous sessions, the Committee has been faced with communications concerning events that occurred prior to the entry into force of the Optional Protocol for the State concerned. The criterion of admissibility has been whether the events have had continued effects which themselves constitute violations of the Covenant after the entry into force of the Optional Protocol. In case No. 310/1988 (M.T. v. Spain), the author claimed to have been subjected to torture in Spain in 1984, prior to the entry into force of the Optional Protocol for that country. In declaring the communication inadmissible, the Committee observed:

> "With regard to the application of the Optional Protocol for Spain, the Committee recalls that it entered into force on 25 April 1985. It observes that the Optional Protocol cannot be applied retroactively and concludes that the Committee is precluded *ratione temporis* from examining acts said to have occurred in March 1984, unless these acts continued after the entry into force of the Optional Protocol and allegedly constituted a continued violation of the Covenant or had effects that themselves constitute a violation of the Covenant". (annex XII, sect. F, para. 5.2)

(g) Interim measures under rule 86

692. The authors of a number of cases currently before the Committee are convicted persons who have been sentenced to death and are awaiting execution. These authors claim to be innocent of the crimes of which they were convicted and further allege that they were denied a fair hearing. In view of the urgency of the communications, the Committee has requested the States parties concerned, under rule 86 of the Committee's rules of procedure, not to carry out the death sentences. Stays of execution have been granted in this connection.

2. Substantive issues

(a) Right to life (Covenant, art. 6)

693. Although capital punishment is not per se unlawful under the Covenant, article 6, paragraph 2, provides that a "sentence of death may be imposed only for the most serious of crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant" (emphasis added). Thus, a nexus is established between the imposition of a sentence of death and observance by State authorities of Covenant guarantees. Accordingly, in a case where the Committee found that the State party had violated article 14, paragraphs 3 (b) and (d) and paragraph 5, of the Covenant, in that the author had been denied a fair trial and appeal, the Committee held that in the circumstances the imposition of the sentence of death also entailed a violation of article 6. In its views in case No. 253/1987 (Paul Kelly v. Jamaica) the Committee observed:

> "The Committee is of the opinion that the imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is available, a violation of article 6 of the Covenant. As the Committee noted in its general comment 6 (16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that 'the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal'".

Having concluded that the final sentence of death had been imposed without the requirements of article 14 having been fully met, the Committee found that the right protected by article 6 had been violated. (annex XI, sect. D, para. 5.14)

(b) Guarantees of a fair trial (Covenant, art. 14)

694. Article 14 of the Covenant guarantees minimum standards of a fair hearing. Pursuant to article 14, paragraph 3 (b), accused persons must have adequate time and facilities to prepare their defence. In the Committee's views in cases Nos. 226/1987 and 256/1987 (Michael Sawyers and Michael and Desmond McLean v. Jamaica), the Committee addressed the authors' allegations that they had had insufficient opportunity to meet with counsel. In finding no violation of this provision, the Committee noted:

> "that the right of an accused person to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and an emanation of the principle of equality of arms. The determination of what constitutes 'adequate time' depends on an assessment of the circumstances of each case. While it is uncontested that none of the accused met with their lawyers more than twice prior to the trial, the Committee cannot conclude that the lawyers were placed in a situation where they were unable properly to prepare the case for the defence. In particular, the material before the Committee does not reveal that an adjournment of the case was requested

> on grounds of insufficient time for the preparation of the defence; nor has it been argued that the judge would have denied such an adjournment, had it been requested". (annex XI, sect. B, para. 13.6)

695. Pursuant to paragraph 3 (e) of article 14, an accused person shall have the right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. In case No. 229/1987 (Irvine Reynolds v. Jamaica), the Committee found no violation of this provision and observed:

> "In respect of the author's claim that witnesses on his behalf who would have been available to testify were not called, the Committee is not in a position to ascertain whether the failure of the representative to call these witnesses or, if necessary, to subpoena them, was a matter of professional judgement or of negligence. The evidence before the Committee does not support a finding of a violation of article 14, paragraph 3 (e), of the Covenant." (annex XI, sect. C, para. 6.4. See also views in cases Nos. 226/1987 and 256/1987 annex XI, sect. B, para. 13.6)

696. Pursuant to paragraph 3 (f) of article 14, if an accused person cannot understand or speak the language used in court, he shall have the free assistance of an interpreter. In declaring case No. 341/1988 (Z.P. v. Canada) inadmissible, the Committee observed:

> "With respect to the claim that the author was denied the services of an interpreter, the Committee finds that Z.P. has failed to substantiate his claim sufficiently, for purposes of admissibility. The material before the Committee shows that the author could express himself in adequate English and French and that he did not apply for an interpreter during the trial. The Committee reaffirms in this context that the requirement of a fair hearing does not obligate States parties to make the services of an interpreter available ex officio or upon application to a person whose mother tongue differs from the official court language, if the person is capable of expressing himself adequately in the official language." (annex XII, sect. J, para. 5.3)

697. In cases Nos. 221/1987 and 323/1988 (Yves Cadoret and Hervé Le Bihan v. France) the Committee found no violation of article 14, paragraph 3 (f), and observed:

> "The Committee has noted the authors' claim that the notion of a 'fair trial', within the meaning of article 14 of the Covenant, implies that the accused be allowed, in criminal proceedings, to express himself or herself in the language in which he or she normally expresses himself or herself, and that the denial of an interpreter for himself or herself and his or her witnesses constitutes a violation of article 14, paragraphs 3 (e) and (f). The Committee observes, as it has done on a previous occasion, that article 14 is concerned with procedural equality; it enshrines, inter alia, the principle of equality of arms in criminal proceedings. The provision for the use of one official court language by States parties to the Covenant does not, in the Committee's opinion, violate article 14. Nor does the requirement of a fair hearing obligate States parties to make available to a person whose mother tongue differs

> from the official court language, the services of an interpreter, if that person is capable of understanding and expressing himself or herself adequately in the official language. Only if the accused or the witnesses have difficulties in understanding or expressing themselves in the court language is it obligatory that the services of an interpreter be made available.
>
> "On the basis of the information before it, the Committee finds that the French courts complied with their obligations under article 14, paragraph 1, in conjunction with paragraphs 3 (e) and (f). The authors have not shown that they, or the witnesses called on their behalf, were unable to understand and express themselves adequately in French before the tribunals. In this context, the Committee notes that the notion of a fair trial in article 14, paragraph 1, juncto paragraph 3 (f), does not imply that the accused be afforded the possibility to express himself or herself in the language that he or she normally speaks or speaks with a maximum of ease. If the court is certain, as it follows from the decision of the Tribunal Correctionnel and of the Court of Appeal of Rennes, that the accused are sufficiently proficient in the court's language, it need not take into account whether it would be preferable for the accused to express themselves in a language other than the court language." (annex XI, sect. A, paras. 5.6 and 5.7) See also the Committee's views in case No. 327/1988 (annex XI, sect. F, para. 5.6).

(c) The right to have a conviction and sentence reviewed by a higher tribunal (Covenant, art. 14, para. 5)

698. The right to appeal can be effectively exercised only if there is a written judgement of a lower tribunal. In its views on communication No. 253/1987 (Paul Kelly v. Jamaica) the Committee found a violation of article 14, paragraph 5, and observed:

> "However, because of the absence of a written judgement of the Court of Appeal, the author has, for almost five years since the dismissal of his appeal in April 1986, been unable effectively to petition the Judicial Committee of the Privy Council ... This, in the Committee's opinion, entails a violation of article 14, paragraph 3 (c), and article 14, paragraph 5. The Committee reaffirms that in all cases, and in particular in capital cases, the accused is entitled to trial and appeal proceedings without undue delay, whatever the outcome of these judicial proceedings may turn out to be." (annex XI, sect. D, para. 5.12)

(d) Equality before the law, equal protection of the law (Covenant, art. 26)

699. At prior sessions, the Committee had an opportunity to pronounce on the scope of article 26 of the Covenant, including its applicability with regard to the distribution of social security benefits. At its fortieth session, the Committee had to decide whether under article 26 States parties were obliged to provide school textbooks and meals equally to pupils attending public and private schools, and whether it was compatible with article 26 for some municipalities to make distinctions among the private schools. In cases Nos. 298/1988 and 299/1988 (G. and L. Lindgren et al. v. Sweden), the Committee found no violation of article 26 and observed:

> "The State party's educational system provides for comprehensive public sector schooling and allows for private education as an alternative to public education. In this connection, the Committee observes that the State party and its municipalities make public sector schooling and a variety of ancillary benefits, such as free transport by bus, free textbooks and school meals, available to all children subject to compulsory school education. The State party cannot be deemed to be under an obligation to provide the same benefits to private schools; indeed, the preferential treatment given to public sector schooling is reasonable and based on objective criteria. The parents of Swedish children are free to take advantage of the public sector schooling or to choose private schooling for their children. The decision of the authors of these communications to choose private education was not imposed on them by the State party or by the municipalities concerned, but reflected a free choice recognized and respected by the State party and the municipalities. Such free decision, however, entails certain consequences, notably payment of tuition, transport, textbooks and school meals. The Committee notes that a State party cannot be deemed to discriminate against parents who freely choose not to avail themselves of benefits which are generally open to all. The State party has not violated article 26 by failing to provide the same benefits to parents of children attending private schools as it provides to parents of children at public schools.
>
> "The authors also allege discrimination by the State party because different private schools receive different benefits from the municipalities. The Committee notes that the authors complain about decisions taken not by the authorities of the Government of Sweden but rather by local authorities. The State party has referred to the decentralized system existing in Sweden, whereby decisions of this nature are taken at the local level. In this connection, the Committee recalls its prior jurisprudence that the State party's responsibility is engaged by virtue of decisions of its municipalities and that no State party is relieved of its obligations under the Covenant by delegating some of its functions to autonomous organs or municipalities. 11/ The State party has informed the Committee that the various municipalities decide upon the appropriateness of private schools in their particular education system. This determines whether a subsidy will be awarded. This is how the Swedish school system is conceived pursuant to the School Act of 1985. When a municipality makes such a decision, it should be based on reasonable and objective criteria and made for a purpose that is legitimate under the Covenant. In the cases under consideration, the Committee cannot conclude, on the basis of the information before it, that the denial of a subsidy for textbooks and school meals of students attending the Ellen Key School in Stockholm and the Rudolf Steiner School in Norrköping was incompatible with article 26 of the Covenant." (annex XI, sect. E, paras. 10.3 and 10.4)

H. Remedies called for under the Committee's views

700. The Committee's decisions on the merits are referred to as "views" in article 5, paragraph 4, of the Optional Protocol. After the Committee has made a finding of a violation of a provision of the Covenant, it proceeds to

ask the State party to take appropriate steps to remedy the violation. For instance, in the period covered by the present report, the Committee, in a case concerning the death penalty, found that "in capital punishment cases, States parties have an imperative duty to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant. The Committee is of the view that Mr. Paul Kelly, victim of a violation of article 14, paragraphs 3 (c) and (d) and paragraph 5, of the Covenant, is entitled to a remedy entailing his release." In its views the Committee stated that it would "wish to receive information on any relevant measures taken by the State party in respect of the Committee's views". (annex XI, sect. D, paras. 7 and 8)

I. Monitoring compliance with the Committee's views under the Optional Protocol

701. From its second to forty-second sessions, the Human Rights Committee adopted views with respect to 119 communications received under the Optional Protocol and found violations in 93 of them.

702. At the thirty-seventh session, Committee members considered that it would be appropriate to assess the degree of compliance by States with the Committee's views. At its thirty-eighth session, the Human Rights Committee discussed a paper on the question of the Committee's powers in relation to the responses, or lack thereof, by States parties to its views and decided that it would be useful to establish a mechanism to seek and evaluate information concerning the follow-up to its views. In the past, the Committee had requested such information in notes verbales accompanying the transmittal of its views. Furthermore, Committee members have used the opportunity, when examining States' reports under article 40, to raise the issue (and, indeed, to present lists of cases to the States' representatives). Follow-up information continued to be fragmentary, and the Committee very often had no information on what had happened to a particular victim of a violation of the Covenant after it had issued its views. Further, the Committee has received letters of complaint from a number of victims stating that their situation remained unchanged or that no appropriate remedy had been provided.

703. At its thirty-ninth session, the Committee therefore decided to adopt measures to follow up on its views. The measures are reproduced in annex XI to the Committee's annual report for 1990. At its 1002nd meeting, the Committee appointed Mr. János Fodor as Special Rapporteur for the follow-up of views for the term of one year. At its forty-second session, the Committee renewed his mandate for an additional year.

704. At its fortieth session Mr. Fodor proposed to send notes verbales to those States parties that had not informed the Committee of measures taken in pursuance of the Committee's views. Such notes verbales were accordingly sent by the Secretariat. At its forty-first and forty-second sessions, Mr. Fodor presented progress reports at closed meetings.

J. Information received from States parties following the adoption of views

705. During its thirty-eighth session, the Committee adopted its views on case No. 291/1988 (Mario Inés Torres v. Finland). 12/ The Committee found that there had been a violation of article 9, paragraph 4, of the Covenant and observed that the State party should "remedy the violations suffered by the author and ... ensure that similar violations do not occur in the future".

706. By note verbale of 15 May 1991, in response to the Special Rapporteur's request, the State party informed the Committee that the Aliens Act had been revised by a Parliamentary Act that took effect on 10 May 1990, in order to make the provisions governing the detention of aliens compatible with the Covenant. Moreover, the Covenant had been incorporated into Finnish domestic law, thus making it directly applicable before Finnish courts and authorities. According to a decision dated 8 January 1991, the Finnish Ministry of the Interior agreed to pay 7,000 Finnish marks to Mr. Torres as compensation.

707. During its thirty-ninth session, the Committee adopted its views on case No. 305/1988 (Hugo van Alphen v. the Netherlands). The Committee found a violation of article 9, paragraph 1, of the Covenant because the author, a Dutch lawyer, had been kept in detention for a period of nine weeks in connection with his refusal to cooperate in an investigation against his clients. 13/

708. By note verbale of 15 May 1991, the State party informed the Committee that although it was unable to share the Committee's view that there had been a violation of article 9, paragraph 1, of the Covenant, it would, "out of respect for the Committee ... make to Mr. van Alphen an ex-gratia payment in the amount of (Dutch Guilders) 5,000".

709. Responses have also been received relating to the Committee's views on some communications concerning Colombia, Peru and Trinidad and Tobago. It is expected that a more extensive progress report will be presented to the Committee during its forty-third session in October/November 1991.

Notes

1/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vols. I and II.

2/ Ibid., Forty-fifth Session, Supplement No. 1 (A/45/1).

3/ Ibid., Thirty-second Session, Supplement No. 44 (A/32/44) and corrigendum, annex IV.

4/ Ibid., Thirty-sixth Session, Supplement No. 40 (A/36/40), annex V.

5/ Ibid., annex VI.

6/ Ibid., Forty-fifth Session, Supplement No. 40 (A/45/40), vol. I, para. 12.

Notes (continued)

7/ The reports and additional information of States parties are documents for general distribution and are listed in the annexes to the annual reports of the Committee; these documents, as well as the summary records of the Committee's meetings, are published in the bound volumes that are being issued, beginning with the years 1977 and 1978.

8/ See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40).

9/ Gueye v. France. Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/44/40), annex X, sect. B.

10/ See Committee's views in communication No. 167/1984 (B. Ominayak and the Lubicon Lake Band v. Canada), decision of 26 March 1990, para. 32.1; communication No. 318/1988 (E.P. et al. v. Colombia), inadmissibility decision of 25 July 1990, para. 8.2). See Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex IX, sect. A and annex X, sect. P.

11/ Communication No. 273/1989 (B.d.B. et al. v. the Netherlands) declared inadmissible on 30 March 1989, para. 6.5. See Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/44/40), annex X, sect. F.

12/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex IX, sect. K.

13/ Ibid., annex IX, sect. M.

ANNEX I

States that have ratified or acceded to the International Covenant on Civil and Political Rights and to the Optional Protocols and States that have made the declaration under article 41 of the Covenant as at 26 July 1991

A. International Covenant on Civil and Political Rights (95)

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Afghanistan	24 January 1983 a/	24 April 1983
Algeria	12 September 1989	12 December 1989
Argentina	8 August 1986	8 November 1986
Australia	13 August 1980	13 November 1980
Austria	10 September 1978	10 December 1978
Barbados	5 January 1973 a/	23 March 1976
Belgium	21 April 1983	21 July 1983
Bolivia	12 August 1982 a/	12 November 1982
Bulgaria	21 September 1970	23 March 1976
Burundi	9 May 1990 a/	9 August 1990
Byelorussian Soviet Socialist Republic	12 November 1973	23 March 1976
Cameroon	27 June 1984 a/	27 September 1984
Canada	19 May 1976 a/	19 August 1976
Central African Republic	8 May 1981 a/	8 August 1981
Chile	10 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 a/	5 January 1984
Costa Rica	29 November 1968	23 March 1976

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Cyprus	2 April 1969	23 March 1976
Czechoslovakia	23 December 1975	23 March 1976
Democratic People's Republic of Korea	14 September 1981 a/	14 December 1981
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 a/	4 April 1978
Ecuador	6 March 1969	23 March 1976
Egypt	14 January 1982	14 April 1982
El Salvador	30 November 1979	29 February 1980
Equatorial Guinea	25 September 1987 a/	25 December 1987
Finland	19 August 1975	23 March 1976
France	4 November 1980 a/	4 February 1981
Gabon	21 January 1983 a/	21 April 1983
Gambia	22 March 1979 a/	22 June 1979
Germany b/	17 December 1973	23 March 1976
Guinea	24 January 1978	24 April 1978
Guyana	15 February 1977	15 May 1977
Haiti	6 February 1991 a/	6 May 1991
Hungary	17 January 1974	23 March 1976
Iceland	22 August 1979	22 November 1979
India	10 April 1979 a/	10 July 1979
Iran (Islamic Republic of)	24 June 1975	23 March 1976
Iraq	25 January 1971	23 March 1976
Ireland	8 December 1989	8 March 1990

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Japan	21 June 1979	21 September 1979
Jordan	28 May 1975	23 March 1976
Kenya	1 May 1972 a/	23 March 1976
Lebanon	3 November 1972 a/	23 March 1976
Libyan Arab Jamahiriya	15 May 1970 a/	23 March 1976
Luxembourg	18 August 1983	18 November 1983
Madagascar	21 June 1971	23 March 1976
Mali	16 July 1974 a/	23 March 1976
Malta	13 September 1990 a/	13 December 1990
Mauritius	12 December 1973 a/	23 March 1976
Mexico	23 March 1981 a/	23 June 1981
Mongolia	18 November 1974	23 March 1976
Morocco	3 May 1979	3 August 1979
Nepal	14 May 1991	14 August 1991
Netherlands	11 December 1978	11 March 1979
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980 a/	12 June 1980
Niger	7 March 1986 a/	7 June 1986
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	28 April 1978	28 July 1978
Philippines	23 October 1986	23 January 1987

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	15 September 1978
Republic of Korea	10 April 1990 a/	10 July 1990
Romania	9 December 1974	23 March 1976
Rwanda	16 April 1975 a/	23 March 1976
Saint Vincent and the Grenadines	9 November 1981 a/	9 February 1982
San Marino	18 October 1985 a/	18 January 1986
Senegal	13 February 1978	13 May 1978
Somalia	24 January 1990 a/	24 April 1990
Spain	27 April 1977	27 July 1977
Sri Lanka	11 June 1980 a/	11 September 1980
Sudan	18 March 1986 a/	18 June 1986
Suriname	28 December 1976 a/	28 March 1977
Sweden	6 December 1971	23 March 1976
Syrian Arab Republic	21 April 1969 a/	23 March 1976
Togo	24 May 1984 a/	24 August 1984
Trinidad and Tobago	21 December 1978 a/	21 March 1979
Tunisia	18 March 1969	23 March 1976
Ukrainian Soviet Socialist Republic	12 November 1973	23 March 1976
Union of Soviet Socialist Republics	16 October 1973	23 March 1976
United Kingdom of Great Britain and Northern Ireland	20 May 1976	20 August 1976

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
United Republic of Tanzania	11 June 1976 a/	11 September 1976
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Viet Nam	24 September 1982 a/	24 December 1982
Yemen c/	9 February 1987 a/	9 May 1987
Yugoslavia	2 June 1971	23 March 1976
Zaire	1 November 1976 a/	1 February 1977
Zambia	10 April 1984 a/	10 July 1984
Zimbabwe	13 May 1991 a/	13 August 1991

B. Declaration under article 41 of the Covenant (31)

State party	Valid from	Valid until
Algeria	12 September 1989	Indefinitely
Argentina	8 August 1986	Indefinitely
Austria	10 September 1978	Indefinitely
Belgium	5 March 1987	Indefinitely
Canada	29 October 1979	Indefinitely
Chile	11 March 1990	Indefinitely
Congo	7 July 1989	Indefinitely
Czechoslovakia	20 March 1991	Indefinitely
Denmark	23 March 1976	Indefinitely
Ecuador	24 August 1984	Indefinitely
Finland	19 August 1975	Indefinitely

State party	Valid from	Valid until
Gambia	9 June 1988	Indefinitely
Germany	28 March 1979	27 March 1996
Hungary	7 September 1988	Indefinitely
Iceland	22 August 1979	Indefinitely
Ireland	8 December 1989	Indefinitely
Italy	15 September 1978	Indefinitely
Luxembourg	18 August 1983	Indefinitely
Malta	13 September 1990	Indefinitely
Netherlands	11 December 1978	Indefinitely
New Zealand	28 December 1978	Indefinitely
Norway	23 March 1976	Indefinitely
Peru	9 April 1984	Indefinitely
Philippines	23 October 1986	Indefinitely
Poland	25 September 1990	Indefinitely
Republic of Korea	10 April 1990	Indefinitely
Senegal	5 January 1981	Indefinitely
Spain	25 January 1985	25 January 1993
Sri Lanka	11 June 1980	Indefinitely
Sweden	23 March 1976	Indefinitely
United Kingdom of Great Britain and Northern Ireland	20 May 1976	Indefinitely

C. Optional Protocol (55)

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Algeria	12 September 1989 a/	12 December 1990
Argentina	8 August 1986 a/	8 November 1986
Austria	10 December 1987	10 March 1988
Barbados	5 January 1973 a/	23 March 1976
Bolivia	12 August 1982 a/	12 November 1982
Cameroon	27 June 1984 a/	27 September 1984
Canada	19 May 1976 a/	19 August 1976
Central African Republic	8 May 1981 a/	8 August 1981
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 a/	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Czechoslovakia	12 March 1991 a/	12 June 1991
Denmark	6 January 1972	23 March 1976
Dominican Republic	4 January 1978 a/	4 April 1978
Ecuador	6 March 1969	23 March 1976
Equatorial Guinea	25 September 1987 a/	25 December 1987
Finland	19 August 1975	23 March 1976
France	17 February 1984 a/	17 May 1984
Gambia	9 June 1988 a/	9 September 1988
Hungary	7 September 1988 a/	7 December 1988
Iceland	22 August 1979 a/	22 November 1979
Ireland	8 December 1989	8 March 1990
Italy	15 September 1978	15 December 1978

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Jamaica	3 October 1975	23 March 1976
Libyan Arab Jamahiriya	16 May 1989 a/	16 August 1989
Luxembourg	18 August 1983 a/	18 November 1983
Madagascar	21 June 1971	23 March 1976
Malta	13 September 1990 a/	13 December 1990
Mauritius	12 December 1973 a/	23 March 1976
Mongolia	16 April 1991 a/	16 July 1991
Nepal	14 May 1991 a/	14 August 1991
Netherlands	11 December 1978	11 March 1979
New Zealand	26 May 1989 a/	26 August 1989
Nicaragua	12 March 1980 a/	12 June 1980
Niger	7 March 1986 a/	7 June 1986
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Peru	3 October 1980	3 January 1981
Philippines	22 August 1989 a/	22 November 1989
Portugal	3 May 1983	3 August 1983
Republic of Korea	10 April 1990 a/	10 July 1990
Saint Vincent and the Grenadines	9 November 1981 a/	9 February 1982
San Marino	18 October 1985 a/	18 January 1986
Senegal	13 February 1978	13 May 1978
Somalia	24 January 1990 a/	24 April 1990
Spain	25 January 1985 a/	25 April 1985
Suriname	28 December 1976 a/	28 March 1977

State party	Date of receipt of the instrument of ratification or accession a/	Date of entry into force
Sweden	6 December 1971	23 March 1976
Togo	30 March 1988 a/	30 June 1988
Trinidad and Tobago	14 November 1980 a/	14 February 1981
Ukrainian Soviet Socialist Republic	25 July 1991 a/	25 October 1991
Uruguay	1 April 1970	23 March 1976
Venezuela	10 May 1978	10 August 1978
Zaire	1 November 1976 a/	1 February 1977
Zambia	10 April 1984 a/	10 July 1984

D. Second Optional Protocol, aiming at the abolition of the death penalty (9) d/

State party	Signature	Date of receipt of the instrument of ratification or accession a/
Australia	-	2 October 1990 a/
Austria	8 April 1991	-
Belgium	12 July 1990	-
Costa Rica	14 February 1990	-
Denmark	13 February 1990	-
Finland	13 February 1990	4 April 1991
Germany e/	13 February 1990	-
Honduras	10 May 1990	-
Iceland	30 January 1991	2 April 1991
Italy	13 February 1990	-
Luxembourg	13 February 1990	-

State party	Signature	Date of receipt of the instrument of ratification or accession a/
Netherlands	9 August 1990	27 February 1991
New Zealand	22 February 1990	22 February 1990
Nicaragua	21 February 1990	-
Norway	13 February 1990	-
Portugal	13 February 1990	17 October 1990
Romania	15 March 1990	27 February 1991
Spain	23 February 1990	11 April 1991
Sweden	13 February 1990	11 May 1990
Uruguay	13 February 1990	-
Venezuela	7 June 1990	-

Notes

a/ Accessions.

b/ Through the accession of the German Democratic Republic to the Federal Republic of Germany with effect from 3 October 1990, the two German States have united to form one sovereign State. As from the date of unification, the Federal Republic of Germany will act in the United Nations under the designation of "Germany". The former German Democratic Republic ratified the Covenant on 8 November 1973.

c/ As of 22 May 1990 the People's Democratic Republic of Yemen and the Yemen Arab Republic merged into a single sovereign State, the Republic of Yemen, with Sana'a as its capital. The People's Democratic Republic of Yemen had acceded to the Covenant on 9 May 1987. The Yemen Arab Republic was not a State party to the Covenant.

d/ The Second Optional Protocol was adopted and opened for signature, ratification or accession in New York on 15 December 1989 and entered into force on 11 July 1991, three months after the date of deposit with the Secretary-General of the tenth instrument of ratification or accession.

e/ Through the accession of the German Democratic Republic to the Federal Republic of Germany with effect from 3 October 1990, the two German States have united to form one sovereign State. As from the date of unification, the Federal Republic of Germany will act in the United Nations under the designation of "Germany". The former German Democratic Republic signed the Second Optional Protocol on 7 March 1990.

ANNEX II

Membership and officers of the Human Rights Committee, 1991-1992 a/

A. Membership

Name of member	Country of nationality
Mr. Francisco José AGUILAR URBINA*	Costa Rica
Mr. Nisuke ANDO**	Japan
Miss Christine CHANET**	France
Mr. Vojin DIMITRIJEVIC**	Yugoslavia
Mr. Omran EL SHAFEI**	Egypt
Mr. János FODOR*	Hungary
Mr. Kurt HERNDL**	Austria
Mrs. Rosalyn HIGGINS*	United Kingdom of Great Britain and Northern Ireland
Mr. Rajsoomer LALLAH*	Mauritius
Mr. Andreas V. MAVROMMATIS*	Cyprus
Mr. Rein A. MYULLERSON*	Union of Soviet Socialist Republics
Mr. Birame NDIAYE**	Senegal
Mr. Fausto POCAR*	Italy
Mr. Julio PRADO VALLEJO**	Ecuador
Mr. Waleed SADI**	Jordan
Mr. Alejandro SERRANO CALDERA*	Nicaragua
Mr. S. Amos WAKO*	Kenya
Mr. Bertil WENNERGREN**	Sweden

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* Term expires on 31 December 1992.

** Term expires on 31 December 1994.

B. Officers

The officers of the Committee, elected for two-year terms at the 1037th meeting, held on 25 March 1991, are as follows:

Chairman: Mr. Fausto Pocar

Vice-Chairmen: Mr. Francisco José Aguilar Urbina
Mr. Vojin Dimitrijevic
Mr. S. Amos Wako

Rapporteur: Mr. Nisuke Ando

Notes

a/ For the membership and officers of the Human Rights Committee until 31 December 1990, see Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), annex II.

ANNEX III

Agendas of the fortieth, forty-first and forty-second sessions of the Human Rights Committee

Fortieth session

At its 1009th meeting, on 22 October 1990, the Committee adopted the following provisional agenda (see CCPR/C/67), submitted by the Secretary-General in accordance with rule 6 of the rules of procedure, as the agenda of the fortieth session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 40 of the Covenant.
4. Consideration of reports submitted by States parties under article 40 of the Covenant.
5. Consideration of communications under the Optional Protocol to the Covenant.

Forty-first session

At its 1037th meeting, on 25 March 1991, the Committee adopted the following provisional agenda (see CCPR/C/71), submitted by the Secretary-General in accordance with rule 6 of the rules of procedure, as the agenda of the forty-first session:

1. Opening of the session by the representative of the Secretary-General.
2. Solemn declaration by the newly elected members of the Committee in accordance with article 38 of the Covenant.
3. Election of the Chairman and other officers of the Committee.
4. Adoption of the agenda.
5. Organizational and other matters.
6. Action by the General Assembly at its forty-fifth session:
    (a) Annual report submitted by the Human Rights Committee under article 45 of the Covenant;
    (b) Effective implementation of United Nations instruments on human rights and effective functioning of bodies established pursuant to such instruments.

7. Submission of reports by States parties under article 40 of the Covenant.

8. Consideration of reports submitted by States parties under article 40 of the Covenant.

9. Consideration of communications under the Optional Protocol to the Covenant.

10. Future meetings of the Committee.

Forty-second session

At its 1064th meeting, on 8 July 1991, the Committee adopted the following provisional agenda (see CCPR/C/72), submitted by the Secretary-General in accordance with rule 6 of the rules of procedure, as the agenda of the forty-second session:

1. Adoption of the agenda.

2. Organizational and other matters.

3. Submission of reports by States parties under article 40 of the Covenant.

4. Consideration of reports submitted by States parties under article 40 of the Covenant.

5. Consideration of communications under the Optional Protocol to the Covenant.

6. Annual report of the Committee to the General Assembly through the Economic and Social Council under article 45 of the Covenant and article 6 of the Optional Protocol.

ANNEX IV

Submission of reports and additional information by States parties under article 40 of the Covenant during the period under review a/

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have note yet been submitted
A. Initial reports of States parties due in 1984			
Gabon	20 April 1984	Not yet received	(1) 15 May 1985 (2) 5 August 1985 (3) 15 November 1985 (4) 6 May 1986 (5) 8 August 1986 (6) 7 April 1987 (7) 1 December 1987 (8) 6 June 1988 (9) 21 November 1988 (10) 10 May 1989 (11) 12 December 1989 (12) 15 May 1990 (13) 23 November 1990 (14) 17 May 1991
B. Initial reports of States parties due in 1987			
Niger	9 June 1987	3 May 1991	-
Sudan	17 June 1987	15 February 1991	-
C. Initial reports of States parties due in 1988			
Equatorial Guinea	24 December 1988	Not yet received	(1) 10 May 1989 (2) 12 December 1989 (3) 15 May 1990 (4) 23 November 1990 (5) 17 May 1991
D. Initial reports of States parties due in 1990			
Algeria	11 December 1990	15 April 1991	-

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have note yet been submitted
E. Initial reports of States parties due in 1991 (within the period under review) b/			
Ireland	7 March 1991	Not yet received	(1) 17 May 1991
Somalia	23 April 1991	Not yet received	-
Republic of Korea	9 July 1991	Not yet received	-
F. Second periodic reports of States parties due in 1983			
Libyan Arab Jamahiriya	4 February 1983	Not yet received	(1) 10 May 1984 (2) 15 May 1985 (3) 13 August 1985 (4) 18 November 1985 (5) 6 May 1986 (6) 8 August 1986 (7) 1 May 1987 (8) 24 July 1987 (9) 1 December 1987 (10) 6 June 1988 (11) 21 November 1988 (12) 10 May 1989 (13) 12 December 1989 (14) 15 May 1990 (15) 23 November 1990 (16) 17 May 1991
Iran (Islamic Republic of)	21 March 1983	Not yet received	(1) 10 May 1984 (2) 15 May 1985 (3) 13 August 1985 (4) 18 November 1985 (5) 6 May 1986 (6) 8 August 1986 (7) 1 May 1987 (8) 24 July 1987 (9) 1 December 1987 (10) 6 June 1988 (11) 21 November 1988 (12) 10 May 1989 (13) 12 December 1989 (14) 15 May 1990 (15) 23 November 1990 (16) 17 May 1991

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have note yet been submitted

G. Second periodic reports of States parties due in 1984

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have note yet been submitted
Bulgaria	28 April 1984	Not yet received	(1) 15 May 1985
			(2) 5 August 1985
			(3) 18 November 1985
			(4) 6 May 1986
			(5) 8 August 1986
			(6) 1 May 1987
			(7) 1 August 1987
			(8) 1 December 1987
			(9) 6 June 1988
			(10) 21 November 1988
			(11) 10 May 1989
			(12) 12 December 1989
			(13) 15 May 1990
			(14) 23 November 1990
			(15) 17 May 1991
Cyprus	18 August 1984	Not yet received	(1) 15 May 1985
			(2) 5 August 1985
			(3) 18 November 1985
			(4) 6 May 1986
			(5) 8 August 1986
			(6) 1 May 1987
			(7) 7 August 1987
			(8) 1 December 1987
			(9) 6 June 1988
			(10) 21 November 1988
			(11) 10 May 1989
			(12) 12 December 1989
			(13) 15 May 1990
			(14) 23 November 1990
			(15) 17 May 1991
Syrian Arab Republic	18 August 1984	Not yet received	(1) 15 May 1985
			(2) 5 August 1985
			(3) 18 November 1985
			(4) 6 May 1986
			(5) 8 August 1986
			(6) 1 May 1987
			(7) 7 August 1987
			(8) 1 December 1987
			(9) 6 June 1988
			(10) 21 November 1988
			(11) 10 May 1989
			(12) 12 December 1989
			(13) 15 May 1990
			(14) 23 November 1990
			(15) 17 May 1991

H. Second periodic reports of States parties due in 1985

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have note yet been submitted
New Zealand-Cook Islands	27 March 1985	Not yet received	(1) 12 December 1989
			(2) 15 May 1990
			(3) 23 November 1990
			(4) 17 May 1991
Gambia	21 June 1985	Not yet received	(1) 9 August 1985
			(2) 18 November 1985
			(3) 6 May 1986
			(4) 8 August 1986
			(5) 1 May 1987
			(6) 1 December 1987
			(7) 6 June 1988
			(8) 21 November 1988
			(9) 10 May 1989
			(10) 12 December 1989
			(11) 15 May 1990
			(12) 23 November 1990
			(13) 17 May 1991
Suriname	2 August 1935	Not yet received	(1) 18 November 1985
			(2) 6 May 1986
			(3) 8 August 1986
			(4) 1 May 1987
			(5) 1 December 1987
			(6) 6 June 1988
			(7) 21 November 1988
			(8) 10 May 1989
			(9) 12 December 1989
			(10) 15 May 1990
			(11) 23 November 1990
			(12) 17 May 1991
Venezuela	1 November 1985	Not yet received	(1) 20 November 1985
			(2) 6 May 1986
			(3) 8 August 1986
			(4) 1 May 1987
			(5) 1 December 1987
			(6) 6 June 1988
			(7) 21 November 1988
			(8) 10 May 1989
			(9) 12 December 1989
			(10) 15 May 1990
			(11) 23 November 1990
			(12) 17 May 1991

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have note yet been submitted
I. Second periodic reports of States parties due in 1986			
Lebanon	21 March 1986	Not yet received	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987 (4) 13 August 1987 (5) 1 December 1987 (6) 6 June 1988 (7) 21 November 1988 (8) 10 May 1989 (9) 12 December 1989 (10) 15 May 1990 (11) 23 November 1990 (12) 17 May 1991
Kenya	11 April 1986	Not yet received	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987 (4) 1 December 1987 (5) 6 June 1988 (6) 21 November 1988 (7) 10 May 1989 (8) 12 December 1989 (9) 15 May 1990 (10) 23 November 1990 (11) 17 May 1991
Mali	11 April 1986	Not yet received	(1) 10 May 1986 (2) 8 August 1986 (3) 1 May 1987 (4) 1 December 1987 (5) 6 June 1988 (6) 21 November 1988 (7) 10 May 1989 (8) 12 December 1989 (9) 15 May 1990 (10) 23 November 1990 (11) 17 May 1991
United Republic of Tanzania	11 April 1986	4 June 1991	-

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have note yet been submitted
Jamaica	1 August 1986	Not yet received	(1) 1 May 1987
			(2) 1 December 1987
			(3) 6 June 1988
			(4) 21 November 1988
			(5) 10 May 1989
			(6) 12 December 1989
			(7) 15 May 1990
			(8) 23 November 1990
			(9) 17 May 1991
Netherlands-Antilles	31 October 1986	Not yet received	(1) 12 December 1989
			(2) 15 May 1990
			(3) 23 November 1990
J. Second periodic reports of States parties due in 1987			
Guyana	10 April 1987	Not yet received	(1) 1 May 1987
			(2) 1 December 1987
			(3) 6 June 1988
			(4) 21 November 1988
			(5) 10 May 1989
			(6) 12 December 1989
			(7) 15 May 1990
			(8) 23 November 1990
			(9) 17 May 1991
Iceland	30 October 1987	Not yet received	(1) 1 December 1987
			(2) 6 June 1988
			(3) 21 November 1988
			(4) 10 May 1989
			(5) 12 December 1989
			(6) 15 May 1990
			(7) 23 November 1990
			(8) 17 May 1991
Democratic People's Republic of Korea	13 December 1987	Not yet received	(1) 23 June 1988
			(2) 21 November 1988
			(3) 10 May 1989
			(4) 12 December 1989
			(5) 15 May 1990
			(6) 23 November 1990
			(7) 17 May 1991

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have note yet been submitted
K. Second periodic reports of States parties due in 1988			
Saint Vincent and the Grenadines	8 February 1988	c/	-
Peru	9 April 1988	17 July 1991	
Egypt	13 April 1988	Not yet received	(1) 21 November 1988 (2) 10 May 1989 (3) 12 December 1989 (4) 15 May 1990 (5) 23 November 1990 (6) 17 May 1991
Viet Nam	23 December 1988	d/	-
El Salvador e/	31 December 1988	Not yet received	(1) 10 May 1989 (2) 12 December 1989 (3) 15 May 1990 (4) 23 November 1990 (5) 17 May 1991
L. Second periodic reports of States parties due in 1989			
Central African Republic f/	9 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991
Gabon g/	20 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991
Afghanistan	23 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991
Belgium	20 July 1989	23 May 1991	-
Guinea	30 September 1989	30 April 1991	-
Luxembourg	17 November 1989	23 July 1991	

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have note yet been submitted
	M. Second periodic reports of States parties due in 1990		
Congo	4 January 1990	Not yet received	(1) 15 May 1990 (2) 23 November 1990 (3) 17 May 1991
Zambia	9 July 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991
Bolivia h/	13 July 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991
Togo	23 August 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991
Republic of Cameroon	26 September 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991
	N. Third periodic reports of States parties due in 1988		
Zaire	30 January 1988	i/	-
Libyan Arab Jamahiriya j/	4 February 1988	Not yet received	(1) 6 June 1988 (2) 21 November 1989 (3) 10 May 1989 (4) 12 December 1989 (5) 15 May 1990 (6) 23 November 1990 (7) 17 May 1991
Iran (Islamic Republic of) j/	21 March 1988	Not yet received	(1) 6 June 1988 (2) 21 November 1988 (3) 10 May 1989 (4) 12 December 1989 (5) 15 May 1990 (6) 23 November 1990 (7) 17 May 1991
Lebanon j/	21 March 1988	Not yet received	(1) 6 June 1988 (2) 21 November 1988 (3) 10 May 1989 (4) 12 December 1989 (5) 15 May 1990 (6) 23 November 1990 (7) 17 May 1991

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have note yet been submitted
Panama	6 June 1988	k/	-
Madagascar	3 August 1988	Not yet received	-
Yugoslavia	3 August 1988	Not yet received	(1) 21 November 1988 (2) 10 May 1989 (3) 12 December 1989 (4) 15 May 1990 (5) 23 November 1990 (6) 17 May 1991
O. Third periodic reports of States parties due in 1989			
Dominican Republic	3 April 1989	l/	-
Bulgaria j/	28 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991
Romania	28 April 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991
Cyprus j/	18 August 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991
Syrian Arab Republic j/	18 August 1989	Not yet received	(1) 12 December 1989 (2) 15 May 1990 (3) 23 November 1990 (4) 17 May 1991
Poland	27 October 1989	15 October 1990	-
P. Third periodic reports of States parties due in 1990			
Trinidad and Tobago	20 March 1990	Not yet received	(1) 15 May 1990 (2) 23 November 1990 (3) 17 May 1991

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have note yet been submitted
Uruguay	21 March 1990	26 March 1991	-
New Zealand j/	27 March 1990	Not yet received	(1) 15 May 1990 (2) 23 November 1990 (3) 17 May 1991
Canada	4 April 1990	20 August 1990	-
Iraq	4 April 1990	5 June 1991	-
Mongolia	4 April 1990	29 November 1990	-
Senegal	4 April 1990	2 April 1991	-
Gambia j/	21 June 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991
India	9 July 1990	m/	-
Mauritius n/	18 July 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991
Colombia	2 August 1990	13 February 1991	-
Costa Rica	2 August 1990	o/	-
Hungary	2 August 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991
Suriname j/	2 August 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991
Denmark	1 November 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991
Italy	1 November 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991
Venezuela j/	1 November 1990	Not yet received	(1) 23 November 1990 (2) 17 May 1991

States parties	Date due	Date of submission	Date of written reminder(s) sent to States whose reports have note yet been submitted
Q. Third periodic reports of States parties due in 1991 (within the period under review) p/			
El Salvador j/	28 February 1991	Not yet received	(1) 17 May 1991
Barbados	11 April 1991	Not yet received	(1) 17 May 1991
Kenya j/	11 April 1991	Not yet received	(1) 17 May 1991
Mali j/	11 April 1991	Not yet received	(1) 17 May 1991
United Republic of Tanzania	11 April 1991	Not yet received	-
Nicaragua	11 June 1991	Not yet received	-

Notes

a/ From 27 July 1990 to 26 July 1991 (end of the forty-second session).

b/ For a complete list of States parties whose initial reports are due in 1991, see CCPR/C/68.

c/ Pursuant to the Committee's decision taken at its thirty-eighth session (973rd meeting), the new date for submission of the second periodic report of Saint Vincent and the Grenadines is 31 October 1991.

d/ At its thirty-ninth session (1003rd meeting), the Committee decided to extend the deadline for the submission of the second periodic report of Viet Nam from 23 December 1988 to 31 July 1991.

e/ At its twenty-ninth session, the Committee decided to extend the deadline for the submission of the second periodic report of El Salvador from 28 February 1986 to 31 December 1988.

f/ At its thirty-second session (794th meeting), the Committee decided to extend the deadline for the submission of the second periodic report of the Central African Republic from 7 August 1987 to 9 April 1989.

g/ The State party's initial report has not yet been received.

h/ At its thirty-sixth session (914th meeting), the Committee decided to extend the deadline for the submission of the second periodic report of Bolivia from 11 November 1988 to 13 July 1990.

Notes (continued)

i/ At its thirty-ninth session (1003rd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Zaire from 30 January 1988 to 31 July 1991.

j/ The State party's second periodic report has not yet been received.

k/ At its forty-first session (1062nd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Panama from 6 June 1988 to 31 March 1992.

l/ Pursuant to the Committee's decision taken at its thirty-eighth session (973rd meeting), the new date for the submission of the Dominican Republic's third periodic report is 31 October 1991.

m/ At its forty-first session (1062nd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of India from 9 July 1990 to 31 March 1992.

n/ At its thirty-sixth session (914th meeting), the Committee decided to extend the deadline for the submission of Mauritius' third periodic report from 4 November 1988 to 18 July 1990.

o/ At its thirty-eighth session (973rd meeting), the Committee decided to extend the deadline for the submission of the third periodic report of Costa Rica from 2 August 1990 to 2 August 1991.

p/ For a complete list of States parties whose third periodic reports are due in 1991, see CCPR/C/70.

ANNEX V

Status of reports considered during the period under review and of reports still pending before the Committee

States parties	Date due	Date of submission	Meetings at which considered
		A. Initial reports	
Niger	9 June 1987	3 May 1991	Not yet considered
Sudan	17 June 1987	15 February 1991	1065th and 1067th (forty-second session)
Algeria	11 December 1990	15 April 1991	Not yet considered
		B. Second periodic reports	
Madagascar	3 August 1983	13 July 1990	1073rd-1075th (forty-second session)
India	9 July 1985	12 July 1989	1039th-1042nd (forty-first session)
United Republic of Tanzania	11 April 1986	4 June 1991	Not yet considered
Sri Lanka	10 September 1986	22 March 1990	1057th-1060th (forty-first session)
Morocco	31 October 1986	22 March 1990	1032nd-1035th (fortieth session)
Panama	31 December 1986	4 August 1988	1051st-1054th (forty-first session)
Jordan	22 January 1987	18 December 1989	1077th-1079th (forty-second session)
Canada	8 April 1988	28 July 1989	1010th-1013th (fortieth session)
Austria	9 April 1988	10 July 1990	Not yet considered
Belgium	20 July 1989	23 May 1991	Not yet considered
Guinea	30 September 1989	30 April 1991	Not yet considered

States parties	Date due	Date of submission	Meetings at which considered
C. Third periodic reports			
Byelorussian Soviet Socialist Republic	4 November 1988	4 July 1990	Not yet considered
Spain	28 April 1989	28 April 1989 1 June 1989	1018th-1021st (fortieth session)
Finland	18 August 1989	28 August 1989	1014th-1016th (fortieth session)
Ukrainian Soviet Socialist Republic	18 August 1989	12 January 1990	1028th, 1029th and 1031st (fortieth session)
United Kingdom of Great Britain and Northern Ireland	18 August 1989	12 January 1990	1045th-1050th (forty-first session)
Poland	27 October 1989	15 October 1990	Not yet considered
Sweden	27 October 1989	30 October 1989	1042nd-1044th (forty-first session)
Ecuador	4 November 1989	7 June 1990	Not yet considered
Uruguay	21 March 1990	26 March 1991	Not yet considered
Canada a/	4 April 1990	20 August 1990	1010th-1013th (fortieth session)
Iraq	4 April 1990	5 June 1991	1080th-1082nd (forty-second session)
Mongolia	4 April 1990	29 November 1990	Not yet considered
Senegal	4 April 1990	2 April 1991	Not yet considered
Colombia	2 August 1990	13 February 1991	Not yet considered

States parties	Date due	Date of submission	Meetings at which considered
D. Additional information submitted subsequent to the examination of initial reports by the Committee			
Kenya b/		4 May 1982	Not yet considered
Gambia b/		5 June 1984	Not yet considered
Panama c/		30 July 1984	1051st-1054th (forty-first session)
E. Additional information submitted subsequent to the examination of second periodic reports by the Committee			
Finland d/		4 June 1986	1014th-1016th (fortieth session)
Sweden d/		1 July 1986	1042nd-1044th (forty-first session)

Notes

a/ The report was considered together with Canada's second periodic report.

b/ At its twenty-fifth session (601st meeting), the Committee decided to consider the report together with the State party's second periodic report.

c/ The report was considered together with Panama's second periodic report.

d/ The reports were considered together with the State party's third periodic report.

ANNEX VI

Decision by the Human Rights Committee concerning the third periodic report of Iraq

DECISION*

The Human Rights Committee,

Noting that the third periodic report of Iraq was due for submission to the Committee on 4 April 1990,

Taking into consideration the recent and current events in Iraq that have affected human rights protected under the International Covenant on Civil and Political Rights,

Acting under article 40, paragraph 1 (b) of that Covenant,

1. Decides to request the Government of Iraq to submit its third periodic report without delay for discussion by the Committee at its forty-second session in July 1991 and, in any event, to submit by 15 June 1991 a report, in summary form if necessary, relating in particular to the application at the present time of articles 6, 7, 9 and 27 of the Covenant;

2. Requests the Secretary-General to bring this decision to the attention of the Government of Iraq.

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* Adopted by the Human Rights Committee at its 1062nd meeting, held on 11 April 1991.

ANNEX VII

Revised guidelines for the preparation of State party reports

A. Consolidated guidelines for the initial part of reports of States parties a/

Land and people

1. This section should contain information about the main ethnic and demographic characteristics of the country and its population, as well as such socio-economic and cultural indicators as per capita income, gross national product, rate of inflation, external debt, rate of unemployment, literacy rate and religion. It should also include information on the population by mother tongue, life expectancy, infant mortality, maternal mortality, fertility rate, percentage of population under 15 and over 65 years of age, percentage of population in rural areas and in urban areas and percentage of households headed by women. As far as possible, States should make efforts to provide all data disaggregated by sex.

General political structure

2. This section should describe briefly the political history and framework, the type of government and the organization of the executive, legislative and judicial organs.

General legal framework within which human rights are protected

3. This section should contain information on:

(a) Which judicial, administrative or other competent authorities have jurisdiction affecting human rights;

(b) What remedies are available to an individual who claims that any of his rights have been violated and what systems of compensation and rehabilitation exist for victims;

(c) Whether any of the rights referred to in the various human rights instruments are protected either in the constitution or by a separate bill of rights and, if so, what provisions are made in the constitution or bill of rights for derogations and in what circumstances;

(d) How human rights instruments are made part of the national legal system;

(e) Whether the provisions of the various human rights instruments can be invoked before, or directly enforced by, the courts, other tribunals or administrative authorities or whether they must be transformed into internal laws or administrative regulations in order to be enforced by the authorities concerned;

(f) Whether there exist any institutions or national machinery with responsibility for overseeing the implementation of human rights.

Information and publicity

4. This section should indicate whether any special efforts have been made to promote awareness among the public and the relevant authorities of the rights contained in the various human rights instruments. The topics to be addressed should include the manner and extent to which the texts of the various human rights instruments have been disseminated, whether such texts have been translated into the local language or languages, what government agencies have responsibility for preparing reports and whether they normally receive information or other inputs from external sources, and whether the contents of the reports are the subject of public debate.

B. Guidelines regarding the form and contents of initial reports from States parties b/

1. Under article 40 of the International Covenant on Civil and Political Rights, each State party has undertaken to submit, within one year of the entry into force of the Covenant in regard to it and thereafter whenever the Human Rights Committee established under the Covenant so requests, reports on the measures which it has adopted to give effect to rights recognized in the Covenant and on the progress made in the enjoyment of those rights. Article 40 also provides that the reports shall indicate the factors and difficulties, if any, affecting the implementation of the Covenant.

2. In order to assist it in fulfilling the tasks entrusted to it pursuant to article 40 of the Covenant, the Committee has decided that it would be useful to inform States parties of its wishes regarding the form and contents of reports. Compliance with the following guidelines will help to ensure that reports are presented in a uniform manner and enable the Committee and States parties to obtain a complete picture of the situation in each State as regards the implementation of the rights referred to in the Covenant. This will also reduce the need for the Committee to request additional information under its rules of procedure.

3. The general part of the report should be prepared in accordance with the consolidated guidelines for the initial part of the reports of States parties to be submitted under the various international human rights instruments, including the Covenant, as contained in document HRI/1991/1.

4. The part of the report relating specifically to parts I, II and III of the Covenant should describe in relation to the provisions of each article:

(a) The legislative, administrative or other measures in force in regard to each right;

(b) Any restrictions or limitations, even of a temporary nature, imposed by law or practice or any other manner on the enjoyment of the right;

(c) Any other factors or difficulties affecting the enjoyment of the right by persons within the jurisdiction of the State;

(d) Any other information on the progress made in the enjoyment of the right.

5. When a State party to the Covenant is also a party to the Optional Protocol, and if in the period under review the Committee has issued views finding that the State party has violated provisions of the Covenant, the report should include a section explaining what action has been taken relating to the communication concerned. In particular, the State party should indicate what remedy it has afforded the author of the communication whose rights the Committee found to have been violated.

6. The report should be accompanied by copies of the principal legislative and other texts referred to in the report. These will be made available to members of the Committee. It should be noted, however, that, for reasons of expense, they will not normally be reproduced for general distribution with the report except to the extent that the reporting State specifically so requests. It is desirable therefore that when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to it.

7. The Committee will welcome at any time information on any significant new development in regard to the rights referred to in the Covenant, but in any event it intends, after the completion of its study of each State's initial report and of any additional information submitted, to call for subsequent reports under article 40 (1) (b) of the Covenant. The aim of such further reports will be to bring the situation up to date in respect of each State.

8. On the basis of reports prepared according to the above guidelines, the Committee is confident that it will be enabled to develop a constructive dialogue with each State party in regard to the implementation of the Covenant and thereby contribute to mutual understanding and peaceful and friendly relations among nations in accordance with the Charter of the United Nations.

C. Guidelines regarding the form and contents of periodic reports from States parties c/

1. Under paragraph 1 of article 40 of the Covenant every State party has undertaken to submit reports to the Human Rights Committee on the implementation of the Covenant

(a) Within one year of the entry into force of the Covenant for the State party concerned,

(b) Thereafter whenever the Committee so requests.

2. At its second session, in August 1977, the Committee adopted general guidelines for the submission of reports by States parties under article 40. d/ In drawing up these guidelines, the Committee had in mind in particular the initial reports to be submitted by States parties under paragraph 1 (a) of article 40. These guidelines have been followed by the great majority of States parties that have submitted reports subsequent to their issuance, and they have proved helpful both to the reporting States and to the Committee.

3. In paragraph 5 of those guidelines, the Committee indicated that it intended, after the completion of its study of each State's initial report and of any subsequent information submitted, to call for subsequent reports under article 40, paragraph 1 (b), of the Covenant.

4. At its eleventh session, in October 1980, the Committee adopted by consensus a statement concerning the subsequent stages of its future work under article 40. It confirmed its aim of engaging in a constructive dialogue with each reporting State and determined that the dialogue should be conducted on the basis of periodic reports from States parties to the Covenant (para. (d)). It also decided that in the light of its experience in the consideration of initial reports, it should develop guidelines for the purpose of subsequent reports. Pursuant to this decision and to the decision taken by the Committee at its thirteenth session to request States parties to submit reports under article 40, paragraph 1 (b), on a periodic basis, the Committee has drawn up the following guidelines regarding the form and contents of such reports, which are designed to complete and to bring up to date the information required by the Committee under the Covenant.

5. General information should be prepared in accordance with the consolidated guidelines for the initial part of reports of States parties to be submitted under the various international human rights instruments including the Covenant (HRI/1991/1).

6. Information relating to each of the articles in parts I, II and III of the Covenant should concentrate especially on:

(a) The completion of the information before the Committee as to the measures adopted to give effect to rights recognized in the Covenant, taking account of questions raised in the Committee on the examination of any previous report and including in particular additional information as to questions not previously answered or not fully answered;

(b) Information taking into account general comments which the Committee may have made under article 40, paragraph 4, of the Covenant;

(c) Changes made or proposed in the laws and practices relevant to the Covenant;

(d) Action taken as a result of experience gained in cooperation with the Committee;

(e) Factors affecting and difficulties experienced in the implementation of the Covenant;

(f) The progress made since the last report in the enjoyment of rights recognized in the Covenant.

7. When a State party to the Covenant is also a party to the Optional Protocol and if, in the period under review, the Committee has issued views finding that the State party has violated provisions of the Covenant, the report should include a section explaining what action has been taken relating to the communication concerned. In particular, the State party should indicate what remedy it has afforded the author of the communication whose rights the Committee found to have been violated.

8. It should be noted that the reporting obligation extends not only to the relevant laws and other norms, but also to the practices of the courts and administrative organs of the State party and other relevant facts likely to show the degree of actual enjoyment of rights recognized by the Covenant.

9. The report should be accompanied by copies of the principal legislative and other texts referred to in it.

10. It is the desire of the Committee to assist States parties in promoting the enjoyment of rights under the Covenant. To this end, the Committee wishes to continue the dialogue which it has begun with reporting States in the most constructive manner possible and reiterates its confidence that it will thereby contribute to mutual understanding and peaceful and friendly relations among nations in accordance with the Charter of the United Nations.

Notes

a/ Also issued separately in document HRI/1991/1.

b/ Adopted by the Committee at its 44th meeting (second session), on 29 August 1977, and embodying amendments adopted by the Committee at its 1002nd meeting (thirty-ninth session) and 1089th meeting (forty-second session). Also issued separately in document CCPR/C/5/Rev.1.

c/ Adopted by the Committee at its 308th meeting (thirteenth session) on 27 July 1981 and embodying amendments adopted by the Committee at its 1002nd meeting (thirty-ninth session) and 1089th meeting (forty-second session). Also issued separately in document CCPR/C/20/Rev.1.

d/ *Official Records of the General Assembly, Thirty-second Session, Supplement No. 44* (A/32/44), annex IV.

ANNEX VIII

Preliminary comments and recommendations to the Preparatory Committee for the World Conference on Human Rights*

The Human Rights Committee,

Pursuant to paragraph 9 of General Assembly resolution 45/155 of 18 December 1990 and paragraph 5 of Commission on Human Rights resolution 1991/30 of 5 March 1991,

1. Decides to request its Chairman to represent it at the first meeting of the Preparatory Committee for the World Conference on Human Rights;

2. Adopts the following recommendations relating to items 5, 6 and 7 of the Preparatory Committee's provisional agenda.

(a) A specific item relating to the activities of the human rights treaty bodies should be included in the agenda of the World Conference;

(b) The treaty bodies of the United Nations human rights system, international and regional human rights bodies and non-governmental organizations should be invited to participate in the World Conference;

(c) The list of issues to be explored during the preparatory process should include the following topics:

(i) Ways and means of encouraging States to ratify human rights instruments;

(ii) Ways and means of improving the effectiveness of the existing human rights organs and treaty bodies, including the development of strategies for the proper financing of the United Nations human rights structure;

(iii) Ways and means of strengthening the material and human resources of the Centre for Human Rights;

(iv) The feasibility and desirability of creating new structures within the United Nations human rights system, such as an office of High Commissioner for Human Rights, an International Court of Human Rights or a Human Rights Institute;

(v) Ways and means of expanding technical, financial, material and moral support to States in the area of administration of justice and the protection and promotion of human rights;

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* Adopted by the Committee at its 1091st meeting, held on 26 July 1991.

(vi) Improving cooperation and coordination between United Nations and regional implementation systems in the field of human rights;

(vii) A study should be undertaken examining the indivisibility of all categories of human rights and the relationship between human rights on the one hand and democracy and development on the other;

(viii) Participants in the preparatory process should be invited to submit their views regarding the existing United Nations human rights arrangements and their recommendations for changes, and such submissions should be compiled into a study for consideration at the World Conference;

(ix) The holding of international workshops, including the participation of major regional human rights institutes, as well as regional workshops, during the preparatory process should be encouraged, and the results of such workshops should be presented to the World Conference.

ANNEX IX

List of States parties' delegations that participated in the consideration of their respective reports by the Human Rights Committee at its fortieth, forty-first and forty-second sessions

CANADA	Representative	H.E. Mr. Gerald E. Shannon Ambassador Permanent Representative of Canada to the United Nations Office at Geneva
	Alternate representatives	Mr. Paul Dubois Minister, Deputy Permanent Representative Permanent Mission of Canada to the United Nations Office at Geneva
		Mr. Alan Kessel First Secretary Permanent Mission of Canada to the United Nations Office at Geneva
	Advisers	Mr. Martin Low Senior General Counsel Human Rights Law Department of Justice
		Ms. Irit Weiser Counsel Human Rights Law Department of Justice
		Mr. Jérôme Lapierre Director-General Citizens' Participation Branch Department of Secretary of State
		Mrs. Marilyn Whitaker Director, Constitution Directorate Department of Indian and Northern Affairs
		Mr. Marcel Cloutier Human Rights Division Department of External Affairs and International Trade
		Mr. Patrice Lafleur Province of Quebec
FINLAND	Representative	Mr. Tom Grönberg Deputy Director General Ministry for Foreign Affairs

FINLAND (continued)	Advisers	Mr. Lauri Lehtimaja Legislative Counsellor Ministry for Foreign Affairs
		Mr. Raimo Lahti Professor, University of Helsinki
SPAIN	Representative	H.E. Mr. Emilio Artacho Ambassador, Permanent Representative of Spain to the United Nations Office at Geneva
	Advisers	Mr. Francisco Javier Borrego Borrego Chief, Legal Service for the European Commission and European Court of Human Rights Ministry of Justice
		Mr. José Luis Los Arcos Counsellor, Permanent Mission of Spain to the United Nations Office at Geneva
UKRAINIAN SSR	Representative	Mr. Fedor G. Burchak Chief, Legal Affairs Service Secretariat of the Supreme Soviet of the Ukrainian SSR
	Alternate representative	Mr. Valery P. Kuchinsky Counsellor, Ministry of Foreign Affairs of the Ukrainian SSR
	Adviser	Mr. Nikoli I. Maimeskoul Second Secretary, Permanent Mission of the Ukrainian SSR to the United Nations Office at Geneva
MOROCCO	Representative	H.E. Mr. El Ghali Benhima Ambassador Permanent Representative of the Kingdom of Morocco to the United Nations Office at Geneva
	Advisers	Mr. Ali Atmani Divisional President, Supreme Court
		Mr. Omar Hilale Counsellor, Permanent Mission of the Kingdom of Morocco to the United Nations Office at Geneva
		Mr. Mohamed Laghmari Counsellor, Permanent Mission of the Kingdom of Morocco to the United Nations Office at Geneva

INDIA	Representative	H.E. Mr. G. Ramaswamy Attorney-General of India
	Advisers	H.E. Mr. Chinmaya Rajaninath Gharekhan Permanent Representative of India to the United Nations
		H.E. Mr. Prabhakar Menon Deputy Permanent Representative of India to the United Nations
		Ms. Sujata Mehta First Secretary Permanent Mission of India to the United Nations
		Mr. Tarsem Lal Gill First Secretary Permanent Mission of India to the United Nations
SWEDEN	Representative	Mr. Hans Corell Ambassador, Under-Secretary for Legal and Consular Affairs Ministry for Foreign Affairs
	Advisers	Mr. Karl-Ingvar Rundqvist Under-Secretary for Legal Affairs Ministry of Health and Social Affairs
		Mr. Erik Lempert Permanent Under-Secretary Ministry of Labour
		Ms. Eva Jagander Legal Adviser Ministry of Foreign Affairs
		Mr. Staffan Duhs Counsellor Permanent Mission of Sweden to the United Nations
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	Representative	Mr. John F. Halliday Deputy Under-Secretary of State
	Advisers	Mrs. Sally A. Evans Assistant Legal Adviser
		Mr. Adrian J. Beamish Assistant Under-Secretary of State
		Mr. Michael C. Wood Legal Counsellor

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND (continued)		Mr. Martin C. Raven First Secretary Mission of the United Kingdom and Northern Ireland to the United Nations
		Miss Janet N. Duff Human Rights Unit United Nations Department
		Mr. Frank Stock Solicitor General (Hong Kong)
		Mr. Darwin Chen Deputy Secretary Constitutional Affairs (Hong Kong)
		Mr. Philip J. Dykes Assistant Solicitor General (Hong Kong)
PANAMA	Representative	H.E. Mr. Rogelio Cruz Rios Attorney-General
	Advisers	H.E. Mr. César Pereira Burgos Ambassador, Permanent Representative of Panama to the United Nations
		Miss Tulia Pardo R. Auxiliary Circuit Procurator, Office of the Attorney-General Member of Delegation
		Miss Mercedes de Leon First Secretary, Office of the Attorney-General Member of Delegation
SRI LANKA	Representative	Hon. Sunil de Silva Attorney-General of Sri Lanka
	Advisers	H.E. Dr. Stanley Kalpagé Permanent Representative of Sri Lanka to the United Nations
		Mr. H. K. J. R. Bandara Deputy Permanent Representative of Sri Lanka to the United Nations
		Mr. Asela G. Ranasinghe Second Secretary Permanent Mission of Sri Lanka to the United Nations

SUDAN	Representative	Dr. Abdel Samie Omer Minister and Political Adviser to the Political Committee of the Revolution Command Council
MADAGASCAR	Representative	H.E. Mr. Laurent Radaody Rakotondravao Ambassador to the United Nations Office at Geneva and Vienna
	Adviser	Mr. Pierre Verdoux Deputy Permanent Representative
JORDAN	Representative	Mr. Salameh Hammad Secretary-General of the Ministry of Interior
	Adviser	Mr. Fakhri Matalgah First Secretary Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations Office at Geneva
IRAQ	Representative	Dr. Dhari Khalil Mahmood Director General at the Ministry of Justice
	Advisers	Mr. Basil Yousif Advocate Member of the National Committee for Human Rights
		Mr. Mohamed Abdul Aziz Hussein First Secretary Ministry for Foreign Affairs

ANNEX X

Mandate of the Special Rapporteur on New Communications

In order to expedite the processing of new communications and lighten the burden of the Committee and its Working Group in this respect, the Committee decided, at its thirty-fifth session, to designate one of its members as Special Rapporteur on New Communications and amended rules 89 and 91 of its rules of procedure accordingly. [a] At its 1087th meeting on 24 July 1991, the Committee adopted these revised terms of reference.

The Special Rapporteur on New Communications shall have the following mandate:

(a) To examine all new communications received by the Committee and to take whatever action is necessary pursuant to rule 91 of the Committee's rules of procedure;

(b) To issue rule 86 requests, whether coupled with a request under rule 91 or not;

(c) To inform the Committee at each session on action taken under rules 86 and 91;

(d) To draft recommendations for the Committee's consideration to declare communications inadmissible under articles 1, 2, 3 and 5 of the Optional Protocol. In particular, the Special Rapporteur may recommend inadmissibility *ratione materiae*, *personae* or *temporis*, notably, but not exclusively, on grounds of an author's lack of standing to submit a communication, insufficient substantiation of allegations, abuse of the right of submission, incompatibility with the provisions of the Covenant, lack of competence by the Committee under the Optional Protocol, non-exhaustion of domestic remedies, preclusion because of a State party's reservation or simultaneous examination under another procedure of international investigation or settlement.

Notes

[a] *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40* (A/44/40), para. 620 and annex IX.

ANNEX XI

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights

A. Communications Nos. 221/1987 and 323/1988, Yves Cadoret and Hervé Le Bihan v. France (views adopted on 11 April 1991, forty-first session)

Submitted by:	Yves Cadoret Hervé Le Bihan
Alleged victims:	The authors
State party concerned:	France
Date of communications:	15 January 1987 and 25 July 1988
Date of the decisions on admissibility:	25 July and 9 November 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 11 April 1991,

Having concluded its consideration of communications Nos. 221/1987 and 323/1988, submitted to the Committee by Yves Cadoret and Hervé Le Bihan under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communications and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communications (initial submissions dated 15 January 1987 and 25 July 1988, respectively) are Yves Cadoret and Hervé Le Bihan, two French citizens employed as a teacher and an education advisor, respectively, and residing at Bretagne, France. They claim to be the victims of a violation by France of articles 14, 19, 26 and 27 of the International Covenant on Civil and Political Rights.

Facts as submitted

2.1 On 20 March 1985, the authors appeared before the Tribunal Correctionnel of Rennes on charges of having vandalized three road signs near Rennes in June 1984. They state that although Breton is their mother tongue, they were not allowed to express themselves in that language before the Tribunal, and that three witnesses they had called were unable to testify in the Breton language. No information about the actual sentences against the authors is provided, but they state that they appealed against the decision of the Tribunal Correctionnel. At its hearing of 23 September 1985, the Court of Appeal of Rennes allegedly again denied them the possibility to address the Court in Breton.

2.2 With respect to the requirement of exhaustion of domestic remedies, the authors allege that no remedies are available, because the French judicial system does not recognize the use of Breton.

Complaint

3.1 The authors claim that they were denied a fair trial, in violation of article 14, paragraphs 1 and 3 (e) and (f) because they were denied the right to express themselves in Breton before the French courts and therefore did not testify. In particular, they allege that the courts steadfastly refuse to provide the services of interpreters for accused persons of Breton mother tongue on the ground that they are deemed to be proficient in French. In this connection, they maintain that the Tribunal Correctionnel did not ascertain whether they were proficient in French. Mr. Cadoret similarly denies that he was interrogated in French before the Court of Appeal. In this context, he claims that he never pretended that he was not fluent in French, but merely insisted on being heard in Breton. This also applies to his interrogation before the Court of Appeal, where he only spoke one sentence, by which he manifested his desire to express himself in Breton.

3.2 Mr. Cadoret contends that no provision of the French Code of Penal Procedure obliges the accused or a party to a case to express himself or herself in French before criminal tribunals. More specifically, he refers to article 407 of the French Code of Penal Procedure and argues that this provision does not impose the use of the French language. This is said to have been confirmed by a letter from the Minister of Justice, dated 29 March 1988, which indicates that article 407 only appears to impose the use of the French language ("semble imposer l'usage de la seule langue française"), and that the use of languages other than French in court is left to the discretion and case-by-case appreciation of the judicial authorities. This "uncertain situation", according to Mr. Cadoret, explains why some tribunals allow individuals charged with criminal offences as well as their witnesses to express themselves in Breton, as did, for example, the Tribunal of Lorient (Bretagne) on 3 February 1986 in a case similar to his. Mr. Cadoret further contends that the provisions of the Code of Penal Procedure governing the court language cannot be said to be designed to guarantee the equal treatment of citizens. Thus, one of the authors' witnesses, a professor at the University of Rennes, was denied the opportunity to testify in Breton on behalf of the authors, while he was permitted to do so in a different case.

3.3 The authors claim that the refusal of the courts to let them present their defence in Breton is a clear and serious restriction of their freedom of expression, and that this implies that French citizens mastering both French and Breton can only air their ideas and their views in French. This, it is claimed, is contrary to article 19, paragraph 2, of the Covenant.

3.4 Mr. Cadoret further contends that the denial of the use of Breton before the courts constitutes discrimination on the ground of language. He adds that even if he were bilingual, this would in no way prove that he has not been a victim of discrimination. He reiterates that French tribunals do not apply the Code of Penal Procedure with a view to guaranteeing equal treatment of all French citizens. In this context, he again refers to differences in the application of article 407 of the Code of Penal Procedure by the French tribunals and especially those in Bretagne, where some tribunals allegedly are reluctant to allow accused individuals to express themselves in Breton even if they experience severe difficulties of expression in French, whereas others now accept the use of the Breton language in court. In this way, he claims, French citizens who speak Breton are subjected to discrimination before the courts.

3.5 With respect to article 27, the authors argue that the fact that the State party does not recognize the existence of minorities on its territory does not mean that they do not exist. Although France has only one official language, the existence of minorities in Bretagne, Corsica or Alsace that speak languages other than French is well known and documented. There are said to be several hundred thousand French citizens who speak Breton.

State party's observations

4.1 In its submissions, the State party provides a detailed account of the facts of the cases and contends that available domestic remedies have not been exhausted by the authors. Thus, while the authors appealed against the sentence of the Tribunal Correctionnel, they did not appeal against the decision of the judge of first instance not to make available to them and their witnesses an interpreter. As a result, the State party claims, the authors are precluded from seizing the Human Rights Committee on the ground that they were denied the right to express themselves in Breton before the courts because, in that respect, they did not avail themselves of existing remedies.

4.2 The State party rejects the allegations that the authors were denied a fair hearing, that they and their witnesses were not afforded the possibility to testify and that therefore article 14, paragraph 1, and article 14, paragraphs 3 (e) and (f), of the Covenant have been violated. It contends that the authors' allegations concerning article 14, paragraph 1, cannot be determined *in abstracto* but must be examined in the light of the particular circumstances of the case. It submits that on numerous occasions during the judicial proceedings, the authors clearly established that they were perfectly capable of expressing themselves in French.

4.3 The State party further submits that criminal proceedings are an inappropriate venue for expressing demands linked to the promotion of the use of regional languages. The sole purpose of criminal proceedings is to establish the guilt or the innocence of the accused. In this respect, it is important to facilitate a direct dialogue between the accused and the judge. Since the intervention of an interpreter always encompasses the risk of the accused's statements being reproduced inexactly, resort to an interpreter must be reserved for strictly necessary cases, i.e., if the accused does not sufficiently understand or speak the court language.

4.4 The State party affirms that in the light of the above considerations, the President of the Tribunal of Rennes was justified in not applying article 407 of the French Penal Code, as requested by Mr. Cadoret. This provision stipulates that whenever the accused or a witness does not sufficiently master French, the President of the Court must, ex officio, request the services of an interpreter. In the application of article 407, the President of the Court has a considerable margin of discretion, based on a detailed analysis of the individual case and all the relevant documents. This has been confirmed by the Criminal Chamber of the Court of Cassation on several occasions. a/ It adds that article 407 of the Code of Penal Procedure, which stipulates that the language used in criminal proceedings is French, is not only compatible with article 14, paragraph 3 (f), of the Covenant, but goes further in its protection of the rights of the accused, since it requires the judge to provide for the assistance of an interpreter if the accused or a witness has not sufficiently mastered the French language.

4.5 The State party recalls that the authors and all the witnesses called on their behalf were francophone. In particular, it observes that Mr. Le Bihan did not specifically request the services of an interpreter. The State party further acknowledges that two French courts - those of Guingamp and Lorient in Bretagne - allowed, in March 1984 and February 1985 respectively, French citizens of Breton origin to resort to interpreters: it contends, however, that these decisions were exceptions to the rule, and that the Court of Appeal of Rennes as well as the Tribunaux de Grande Instance de Guingamp and Lorient usually refuse to apply them vis-à-vis accused individuals or witnesses who are proficient in French. Accordingly, it is submitted, there can be no question of a violation of article 14, paragraph 3 (f).

4.6 The State party rejects the authors' argument that they did not benefit from a fair trial in that the court refused to hear the witnesses called on their behalf, in violation of article 14, paragraph 3 (e), of the Covenant. Rather, Mr. Cadoret was able to persuade the court to call these witnesses, and it was of their own volition that they did not testify. Using his discretionary power, the President of the Court found that it was neither alleged nor proved that the witnesses were unable to express themselves in French and that their request for an interpreter was merely intended as a means of promoting the cause of the Breton language. It was therefore owing to the behaviour of the witnesses themselves that the court did not hear them. The State party further contends that article 14, paragraph 3 (e), does not cover the language used before a criminal jurisdiction by witnesses called on behalf of or against the accused and that, in any case, witnesses are not entitled, under the Covenant or under article 407 of the Code of Penal Procedure, to rights broader than those conferred upon the accused.

4.7 With respect to a violation of article 19, paragraph 2, the State party contends that the authors' freedom of expression was in no way restricted during the proceedings against them. They were not allowed to express themselves in Breton because they are bilingual. They were at all times at liberty to argue their defence in French, without any requirement to use legal terminology. If the need had arisen, the tribunal itself would have determined the legal significance of the arguments put forth by the authors.

4.8 As to the alleged violation of article 26, the State party recalls that the prohibition of discrimination is enshrined in article 2 of the French

Constitution. It further submits that the prohibition of discrimination laid down in article 26 does not extend to the right of an accused person to choose, in proceedings against him, whatever language he sees fit to use; rather, it implies that the parties to a case accept and submit to the same constraints. The State party contends that the authors have not sufficiently substantiated their allegation to have been victims of discrimination, and adds that the authors' argument that an imperfect knowledge of French legal terminology justified their refusal to express themselves in French before the courts is irrelevant for purposes of article 26. The authors were merely requested to express themselves in "basic" French. Furthermore, article 407 of the Code of Penal Procedure, far from operating as discrimination on the grounds of language within the meaning of article 26, ensures the equality of treatment of the accused and of witnesses before the criminal jurisdictions, because all are required to express themselves in French. The sole exception in article 407 of the Code of Penal Procedure concerns accused persons and witnesses who objectively do not understand or speak the language of the court. This distinction is couched on "reasonable and objective criteria" and thus is compatible with article 26 of the Covenant. Finally, the State party charges that the principle of _venire contra factum proprium_ is applicable to the authors' behaviour: they refused to express themselves in French before the courts under the pretext that they had not mastered the language sufficiently, whereas their submissions to the Committee were made in "irreproachable" French.

4.9 With respect to the alleged violation of article 27, the State party recalls that, upon ratification of the Covenant, the French Government made the following reservation: "In the light of article 2 of the Constitution of the French Republic, the French Government declares that article 27 is not applicable as far as the Republic is concerned." Thus, the State party argues that "the idea of membership of an 'ethnic, religious or linguistic minority' which the applicant invokes is irrelevant in the case in point, and is not opposable to the French Government, which does not recognize the existence of 'minorities' in the Republic, defined, in article 2 of the Constitution, as 'indivisible, secular, democratic and social' (indivisible, laïque démocratique et sociale)".

Issues and proceedings before the Committee

5.1 In considering the admissibility of the communications, the Committee took account of the State party's contention that the communications were inadmissible because the authors had not appealed against the decision of the judge of the Tribunal Correctionnel of Rennes not to make available to them and their witnesses the services of an interpreter. The Committee observed that what the authors sought was the recognition of Breton as a vehicle of expression in court. It recalled that domestic remedies need not be exhausted if they objectively have no prospect of success. This is the case where, under applicable domestic laws, the claim would inevitably be dismissed, or where established jurisprudence of the highest domestic tribunals precluded a positive result. On the basis of these observations, and taking into account relevant French legislation, as well as article 2 of the French Constitution, the Committee concluded that there were no effective remedies that the authors should have pursued in this respect. _De lege lata_, the objective pursued by the authors cannot be achieved by resorting to domestic remedies.

5.2 As to the authors' claim that they had been denied their freedom of expression, the Committee observed that the fact of not having been able to speak the language of their choice before the French courts raised no issues under article 19, paragraph 2. The Committee therefore found that this aspect of the comunications was inadmissible under article 3 of the Optional Protocol as incompatible with the Covenant.

5.3 In respect of the authors' claim of a violation of article 27 of the Covenant, the Committee noted the French "declaration" but did not address its scope, finding that the facts of the communications did not raise issues under this provision. b/

5.4 With respect to the alleged violations of articles 14 and 26, the Committee considered that the authors had made reasonable efforts sufficiently to substantiate their allegations for purposes of admissibility.

5.5 On 25 July and 9 November 1989, the Human Rights Committee, accordingly, declared the communications admissible in so far as they appeared to raise issues under articles 14 and 26 of the Covenant. On 9 November 1989, the Committee also decided to deal jointly with the two communications.

5.6 The Committee has noted the authors' claim that the notion of a "fair trial", within the meaning of article 14 of the Covenant, implies that the accused be allowed, in criminal proceedings, to express himself in the language in which he normally expresses himself, and that the denial of an interpreter for himself and his witnesses constitutes a violation of article 14, paragraphs 3 (e) and (f). The Committee observes, as it has done on a previous occasion, c/ that article 14 is concerned with procedural equality; it enshrines, inter alia, the principle of equality of arms in criminal proceedings. The provision for the use of one official court language by States parties to the Covenant does not, in the Committee's opinion, violate article 14. Nor does the requirement of a fair hearing obligate States parties to make available to a person whose mother tongue differs from the official court language, the services of an interpreter, if that person is capable of understanding and expressing himself adequately in the official language. Only if the accused or the witnesses have difficulties in understanding or expressing themselves in the court language is it obligatory that the services of an interpreter be made available.

5.7 On the basis of the information before it, the Committee finds that the French courts complied with their obligations under article 14, paragraph 1, in conjunction with paragraphs 3 (e) and (f). The authors have not shown that they, or the witnesses called on their behalf, were unable to understand and express themselves adequately in French before the tribunals. In this context, the Committee notes that the notion of a fair trial in article 14, paragraph 1, juncto paragraph 3 (f), does not imply that the accused be afforded the possibility to express himself in the language that he normally speaks or speaks with a maximum of ease. If the court is certain, as it follows from the decision of the Tribunal Correctionnel and of the Court of Appeal of Rennes, that the accused are sufficiently proficient in the court's language, it need not take into account whether it would be preferable for the accused to express themselves in a language other than the court language.

5.8 French law does not, as such, give everyone a right to speak his own language in court. Those unable to speak or understand French are provided with the services of an interpreter. This service would have been available to the authors had the facts required it; as they did not, they suffered no discrimination under article 26 on the ground of their language.

6. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not sustain the authors' claim that they are victims of a violation of any of the provisions of the Covenant.

[Done in English, French, Spanish and Russian, the English text being the original version.]

Notes

a/ See, for example, the judgements of the Criminal Chamber of the Court of Cassation of 21 November 1973 (Motta) and of 30 June 1981 (Fayomi).

b/ Following the decision on admissibility in these cases, the Committee decided at its thirty-seventh session that France's declaration concerning article 27 had to be interpreted as a reservation (T.K. v. France, No. 220/1987, paras. 8.5 and 8.6; H.K. v. France, No. 222/1987, paras. 7.5 and 7.6; cf. also separate opinion by one Committee member).

c/ See communication No. 273/1988 (B.d.B. v. Netherlands, decision on inadmissibility of 30 March 1989, para. 6.4).

B. Communications Nos. 226/1987 and 256/1987, Michael Sawyers and Michael and Desmond McLean v. Jamaica (views adopted on 11 April 1991, forty-first session)

Submitted by:	Michael Sawyers Michael and Desmond McLean (represented by counsel)
Alleged victims:	The authors
State party concerned:	Jamaica
Date of communication:	13 March 1987 and undated communication (received on 28 October 1987)
Date of the decision on admissibility:	7 April 1988

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 11 April 1991,

Having concluded its consideration of communications Nos. 226/1987 and 256/1987, submitted to the Committee by Michael Sawyers and Michael and Desmond McLean under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communications and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. Michael Sawyers submitted his communication on 13 March 1987. A similar communication from his co-defendants, Desmond and Michael McLean, was received on 28 October 1987. The communications were joined by a decision of the Committee dated 7 April 1988. The authors are Jamaican citizens awaiting execution at St. Catherine District Prison, Jamaica. They claim to be the victims of a violation by Jamaica of article 14 of the International Covenant on Civil and Political Rights. They are represented by counsel.

2.1 The authors were arrested in July 1982 and charged with the murder, on 9 July 1982 at about 2.30 a.m., in an area of Kingston known as Waltham Park, of Randolph Ramsay. At the time of his death, the deceased was in the company of his sister, Dawn Ramsay, and Carl Martin, the prosecution's two principal witnesses.

2.2 The authors were tried in the Home Circuit Court of Kingston in November 1983. They challenged the testimony of the prosecution witnesses and stated that none of them had been present at the scene at the time when the murder took place. All three testified that on the night of 9 July 1982 they had been at home asleep. Two witnesses corroborated the evidence of Michael Sawyers and of Michael McLean. Mr. Sawyers further alleges that he was not placed on an identification parade subsequent to his arrest, as is required in capital cases.

2.3 On 25 November 1983, the authors were convicted of murder and sentenced to death. On 10 March 1986, the Jamaican Court of Appeal dismissed their appeal. They subsequently sought leave to appeal to the Judicial Committee of the Privy Council.

3. By decision of 8 April 1987, the Committee transmitted Mr. Sawyers' communication (No. 226/1987) under rule 91 of the rules of procedure to the State party, requesting information and observations relevant to the question of admissibility. In particular, the State party was asked to clarify whether the Court of Appeal had issued a written judgement dismissing the author's appeal and, if it had not yet done so, when that written judgement was expected to become available, and whether the case had been submitted to the Judicial Committee of the Privy Council.

4. In its submission under rule 91, dated 3 June 1987, the State party explained that the Court of Appeal had given a written judgement in the case on 12 February 1987 and provided the Committee with a copy. It further stated that no hearing before the Judicial Committee of the Privy Council had taken place.

5. By further decision under rule 91, dated 12 November 1987, the Committee transmitted to the State party the communication of Michael and Desmond McLean (No. 256/1987) requesting information and observations relevant to the question of admissibility as well as information relating to the status of the case before the Judicial Committee of the Privy Council.

6. In a further submission under rule 91 concerning communication No. 226/1987, dated 7 December 1987, the State party informed the Committee that the author's petition for leave to appeal had been heard by the Judicial Committee of the Privy Council on 8 October 1987 and dismissed. In its submission under rule 91 concerning communication No. 256/1987, dated 16 February 1988, the State party reiterated the information contained in its submission of 7 December 1987 and forwarded a copy of the order of the Privy Council, which does not give reasons for the dismissal.

7.1 Commenting on the State party's further submission under rule 91, Mr. Sawyers states that, on 5 January 1988, he was told by the coordinator of the Jamaica Council for Human Rights that his petition for leave to appeal to the Judicial Committee of the Privy Council had been dismissed because the Court of Appeal of Jamaica had not issued a written judgement in the case.

7.2 Mr. Sawyers further states that the Jamaica Council for Human Rights has received a number of unsigned statements concerning his case from people in the community where the murder occurred. These statements, *inter alia*, by the father of the deceased, allegedly would prove that he was innocent. The authors of these statements purportedly explained that they did not do anything to help Mr. Sawyers because they would rather see him executed than see all three go free. The father of the deceased is said to be holding back with his statement in defence of the author because of fear of retribution from his family and his wife.

8. On 7 April 1988, the Human Rights Committee declared both communications admissible under the Optional Protocol. It noted, in particular, that the authors' petitions for leave to appeal had been dismissed by the State party's highest appellate court, the Judicial Committee of the Privy Council, and that it thus appeared that there were no further remedies that the authors could still pursue. Considering that the communications referred to the same events, the Committee further decided, under rule 88, paragraph 2, of its rules of procedure, to deal with them jointly. It requested the State party, under article 4, paragraph 2, of the Optional Protocol, to provide the Committee with specific information relating to the substance of the authors' claims and the circumstances under which their petition for leave to appeal to the Judicial Committee of the Privy Council was heard and dismissed and reiterated its request for interim protection under rule 86 of the rules of procedure.

9.1 In its initial submissions under article 4, paragraph 2, of the Optional Protocol, dated 2 and 16 November 1988, the State party argues that the authors' communications are inadmissible on the ground that they have failed to exhaust all available domestic remedies, since they have not taken any action under the Jamaican Constitution to seek enforcement of their right to a fair trial and legal representation. It requests the Committee to revise its decisions on admissibility pursuant to rule 93, paragraph 4, of the rules of procedure and explains:

> "Section 20 of the Jamaican Constitution guarantees to [the authors] protection of the law. It provides in part:
>
> "20 - (1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.
>
> "(2) Any court or other authority prescribed by law for the determination of the existence or the extent of civil rights or obligations shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.
>
> ...
>
> "(6) Every person who is charged with a criminal offence:
>
> "(a) Shall be informed as soon as reasonably practical, in a language which he understands, of the nature of the offence charged;
>
> "(b) Shall be given adequate time and facilities for the preparation of his defence;
>
> "(c) Shall be permitted to defend himself in person or by a legal representative of his own choice;
>
> "(d) Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance of witnesses, subject to the payment

> of their reasonable expenses, and carry out the examination of such witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
>
> "(e) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the English language."

9.2 The State party further states that:

> "Section 25 of the Constitution provides the mechanism for enforcing these rights. It provides as follows:
>
> "25 - (1) ... if any person alleges that any of the provisions of sections 14 to 24 of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.
>
> "(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 14 to 24 to the protection of which the person concerned is entitled: provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law."

9.3 The State party points out that it did not argue the inadmissibility of the communications on the above-mentioned ground because the Committee's rule 91 decisions had focused attention specifically on the status of the authors' appeals before the Privy Council. It adds that it:

> "did not make the point that the communications were inadmissible on the ground of non-exhaustion of domestic remedies because it was answering a specific query from the Committee as to the status of [the authors'] appeals to the Privy Council. Although the Committee had made the formal request for the Government to provide comments relevant to the admissibility of the communications, the concentration by the Committee on the specific issue of the status of the applicants' appeals to the Privy Council led the [Government] to believe that after satisfying itself about that issue on the basis of information from the Privy Council, the Committee would have informed the [Government] that it was proceeding to a decision on the admissibility of the communications at which time the [Government] would have raised the in limine objection to admissibility."

9.4 The State party submits that if a communication has been submitted to the Committee by one of its citizens who was convicted of a criminal offence, the fact that he had his case adjudicated by the Privy Council in respect of that offence does not necessarily mean that he has exhausted domestic remedies, and that in most cases he would not have exhausted them for the following reason:

> "A communication is only properly before the Committee when it alleges the Government's breach of a right protected by the Covenant; the rights so protected are generally coterminous with the rights set out in chapter III of the Jamaican Constitution, in relation to which an application may be made to the Supreme (Constitutional) Court for redress by any person who alleges that his right has been, is being or is likely to be breached. It follows, therefore, that even after a hearing of the criminal appeal by the Privy Council, an unsuccessful appellant may still exercise his constitutional right to seek redress for an alleged breach of, for instance, his right to a fair trial within a reasonable time. Several constitutional cases have been brought, and continue to be brought, before the Constitutional Court by convicted persons who have been unsuccessful in their criminal appeals to the Privy Council."

10.1 Authors' counsel, in two submissions dated 10 February and 8 May 1989, contests the State party's argument that, as the authors did not avail themselves of their right to seek redress before the Constitutional Court of Jamaica pursuant to section 25 of the Constitution, they did not exhaust domestic remedies. He points out that the protection afforded by section 25, paragraph 1, is designed to prevent the enactment of unconstitutional laws and not to prevent abuses in the application of existing laws, as was confirmed by the Privy Council in its judgement in Riley v. Attorney General. Thus the authors clearly have no remedy under section 25, paragraph 1.

10.2 Counsel further points out that appeals to the Jamaican Court of Appeal and the Privy Council are "adequate means of redress" within the meaning of paragraph 2 of section 25, as long as these tribunals comply with those provisions of the Constitution that guarantee a fair trial. If they did not, it would be open to persons convicted at first instance to by-pass the Court of Appeal or the Privy Council and to appeal directly to the Supreme Court under section 25, paragraph 1. This, it is submitted, cannot have been the intention of the drafters of the Constitution. As long as the Court of Appeal and the Privy Council conduct fair hearings, they provide "adequate means of redress", and the remedy under section 25 is not open to convicted prisoners. In the authors' case, it is not alleged that the hearings conducted by the Court of Appeal and the Privy Council were unfair. Thus, while the remedy pursuant to section 25 of the Constitution is theoretically available, it cannot be considered to be an effective one.

10.3 Furthermore, counsel indicates that any remedy, if it is to be more than theoretical, must be accompanied by means enabling the applicant to avail himself of it. No legal aid is, however, provided by the State party for the pursuit of constitutional motions. Since the authors cannot themselves afford legal representation, they would under no circumstances be able to submit their case to the Supreme Constitutional Court.

10.4 As to the merits of the authors' claims, counsel submits that the State party violated article 14, paragraph 3 (b), of the Covenant because it did not provide them with adequate time and facilities to prepare their defence. Thus, Desmond McLean has stated that he met with his attorney while being held in police custody but that he did not have the time to discuss adequately the case with him. Prior to the trial, he did not see his lawyer and was thus unable to comment on the accusations or to provide the lawyer with a list of names and addresses of witnesses on his behalf. Although instructions were later provided during the trial, witnesses who would have been helpful for his case were not called. Furthermore, in the absence of comments on the evidence presented by the prosecution, the prosecution witnesses could not be cross-examined effectively. Michael Sawyers met his lawyer on two occasions prior to the trial. He did not comment on the prosecution statements but provided his attorney with a list of witnesses who could have corroborated his account but who were not called. He further stated that evidence that would have enabled an effective cross-examination of Dawn Ramsay was not obtained. Michael McLean met his lawyer on a single occasion prior to the trial; as in the case of his co-defendants, witnesses who in his opinion would have assisted the presentation of his case were neither interviewed nor called. Counsel submits that in view of the gravity of the charge, the preparation of the authors' trial was inadequate: thus, full instructions and comments on the prosecution statements were not obtained, nor were witnesses traced or interviewed. It is alleged that although it has not been possible to establish exactly how much financial aid was available in the case and although the authors' mothers paid some fees to the lawyers, the funds available were clearly inadequate. Unless legal aid is sufficient, however, it is not possible for the legal representative to trace and interview witnesses and secure their attendance in court.

10.5 Counsel further alleges that the authors were not afforded a fair trial, in violation of article 14, paragraph 1, of the Covenant. He submits that although there were reasonable and well-founded suspicions that three members of the jury had been consulting with the prosecution's main witness, the judge failed to order or carry out a full and proper inquiry into the matter. Secondly, it is submitted that the judge wrongly complied with a request from the jury, made after the close of the case, to see the authors standing up together in the dock, without giving counsel the opportunity to comment on any prejudicial inferences that might have arisen. Thirdly, the judge wrongly excluded photographic evidence of the locus in quo, thus depriving the jury of an opportunity to evaluate the testimony of the prosecution's witnesses. Finally, it is submitted that the judge was biased against the authors and erred in law in the summation. In that context, the judge is said to have misdirected the jury (a) on the issue of the burden of proof, failing to indicate that the Crown had to prove the accused guilty beyond reasonable doubt, (b) on the law of common design in stating that it was sufficient for a defendant to be close enough to give assistance to a principal to be part of a common design and (c) on the importance and effect of the unreliability of, or contradictions in, some of the prosecution witnesses' testimony.

11. By interlocutory decision of 24 July 1989, the Human Rights Committee reiterated its request to the State party to furnish explanations or statements relating to the substance of the communications. By further interlocutory decision of 2 November 1989, it requested the State party to clarify whether the Supreme (Constitutional) Court had had occasion to determine, pursuant to section 25, paragraph 2, of the Jamaican Constitution, whether an appeal to the Court of Appeal and to the Judicial Committee of the Privy Council constituted "adequate means of redress" for an individual claiming that his right to a fair trial (sect. 20, para. 1, of the Constitution) had been violated, and whether the Supreme (Constitutional) Court had declined to exercise its powers under section 25, paragraph 2, in respect of such applications, on the ground that "adequate means of redress" were already provided for in law. By the same decision, the Committee urged

the State party to submit its explanations and observations under article 4, paragraph 2, of the Optional Protocol.

12. In a submission dated 25 September 1989, the State party contends that rule 93, paragraph 4, of the Committee's rules of procedure mandates the Committee to address requests for a review of an admissibility decision by separate decision, before considering the merits of the communication. In line with this interpretation, the State party denies the need to forward explanations and observations under article 4, paragraph 2, of the Optional Protocol. By submission of 11 January 1990, it explains that the Supreme (Constitutional) Court has not yet determined whether pursuant to section 25, paragraph 2, of the Constitution, appeals to the Court of Appeal of Jamaica and the Judicial Committee of the Privy Council constitute "adequate means of redress" for individuals claiming that their constitutionally guaranteed right to a fair trial has been violated. With respect to the purported violation of article 14, paragraph 3 (b), of the Covenant, the State party adds that the author's allegations concerning insufficient access to counsel (para. 10.4) "do not indicate [the] Government's responsibility for any inadequacy in the preparation of the defence". As to the alleged violation of article 14, paragraph 1, the State party claims that the authors' contention that they were denied a fair hearing because of the inadequacy of the judge's instructions raises issues of facts and evidence in the case, which the Committee lacks competence to evaluate. It refers in this context to two decisions of the Human Rights Committee holding that it is for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case. a/

13.1 The Human Rights Committee has considered the present communications in the light of the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

13.2 The Committee has taken due note of the State party's contention that with respect to the alleged violations of article 14 of the Covenant, domestic remedies have not been exhausted by the authors, and of its request to review the admissibility decision of 7 April 1988 pursuant to rule 93, paragraph 4, of the rules of procedure. It takes the opportunity to expand upon its admissibility findings.

13.3 The Committee has taken note of the State party's contention that the communications are inadmissible because of the authors' failure to pursue constitutional remedies available to them under the Jamaican Constitution. In this connection, the Committee observes that section 20, paragraph 1, of the Jamaican Constitution guarantees the right to a fair trial, while section 25 provides for the implementation of the provisions guaranteeing the rights of the individual. Section 25, paragraph 2, stipulates that the Supreme (Constitutional) Court may "hear and determine" applications with regard to the alleged non-observance of constitutional guarantees, but limits its jurisdiction to such cases where the applicants have not already been afforded "adequate means of redress for the contraventions alleged" (sect. 25, para. 2, *in fine*). The Committee notes that the State party was requested to clarify, in a number of interlocutory decisions, whether the Supreme (Constitutional) Court has had the opportunity to determine the question pursuant to section 25, paragraph 2, of the Jamaican Constitution, whether an appeal to the Court of Appeal and the Judicial Committee of the Privy Council constitute "adequate means of redress" within the meaning of section 25, paragraph 2, of the Jamaican Constitution. The State party has replied that the Supreme Court has so far not had said opportunity. Taking into account the State party's clarification, together with the absence of legal aid for filing a motion in the Constitutional Court and the unwillingness of Jamaican counsel to act in this regard without remuneration, the Committee finds that recourse to the Constitutional Court under section 25 of the Jamaican Constitution is not a remedy available to the author within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

13.4 The Committee observes that the wording of rule 93, paragraph 4, of its rules of procedure does not support the State party's contention that a request for the review of an admissibility decision must be addressed prior to, and separately from, consideration of the communication on the merits. b/

13.5 As to the merits, the Committee first addresses the authors' claim that the judge's instructions to the jury were inadequate, in the light of the contradictory evidence that was put before the jury and which it was for the jury to accept or reject. The Committee recalls its established jurisprudence c/ that it is generally for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case. It is not in principle for the Committee to review specific instructions to the jury by the judge in a trial by jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The Committee has no evidence that the trial judge's instructions suffered from such defects. Accordingly, the Committee finds no violation of article 14, paragraph 1.

13.6 As to the authors' claims relating to article 14, paragraphs 3 (b) and (e), the Committee notes that the right of an accused person to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and an emanation of the principle of equality of arms. The determination of what constitutes "adequate time" depends on an assessment of the circumstances of each case. While it is uncontested that none of the accused met with their lawyers more than twice prior to the trial, the Committee cannot conclude that the lawyers were placed in a situation where they were unable properly to prepare the case for the defence. In particular, the material before the Committee does not reveal that an adjournment of the case was requested on grounds of insufficient time for the preparation of the defence; nor has it been argued that the judge would have denied such an adjournment, had it been requested. The Committee is not in a position either to ascertain whether the alleged failure of the representatives to call witnesses who might have corroborated the authors' testimonies was a matter of professional judgement or of negligence.

13.7 Furthermore, the Committee notes that both Mr. Sawyers and Messrs. McLean were represented by privately retained counsel during trial; on appeal, Messrs. McLean were represented by the same privately retained counsel. Mr. Sawyers was represented by a different counsel, who withdrew before the appeal was concluded (instead, a legal aid lawyer, a Queen's counsel, was appointed). Any shortcomings regarding time for consultation and preparation of the defence cannot, therefore, be attributed to the State party.

13.8 In respect of the authors' claim that they were denied a fair trial on account of a "reasonable and well founded" suspicion that there had been contacts between some jurors and a prosecution witness, the Committee finds that this claim has not been substantiated.

13.9 Accordingly, the Committee finds that there has been no violation of article 14, paragraphs 3 (b) and (e), of the Covenant.

14. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before the Committee do not disclose any violation of the provisions of the Covenant.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See communications Nos. 290/1988 (A.W. v. Jamaica) and 369/1989 (G.S. v. Jamaica), inadmissibility decisions of 8 November 1989, paras. 8.2 and 3.2, respectively.

b/ Rule 93, paragraph 4, reads: "Upon consideration of the merits, the Committee may review a decision that a communication is admissible in the light of any explanation or statements submitted by the State party pursuant to this rule."

c/ See, for example, the Committee's views in communication No. 250/1987 (Carlton Reid v. Jamaica), adopted on 20 July 1990, paras. 10.3 and 10.4.

C. Communication No. 229/1987, Irvine Reynolds v. Jamaica (views adopted on 8 April 1991, forty-first session)

Submitted by:	Irvine Reynolds
Alleged victim:	The author
State party concerned:	Jamaica
Date of communication:	22 April 1987
Date of the decision on admissibility:	18 July 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 8 April 1991,

Having concluded its consideration of communication No. 229/1987, submitted to the Committee by Irvine Reynolds under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communications and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (initial submission dated 22 April 1987 and subsequent correspondence) is Irvine Reynolds, a Jamaican citizen awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation of his human rights by Jamaica, without specifying which provisions of the International Covenant on Civil and Political Rights he considers to have been violated. It is clear from his submissions, however, that the allegations relate primarily to article 14 of the Covenant. He is represented by counsel.

Facts as submitted by the author

2.1 The author was arrested on 1 November 1982 on suspicion of having murdered, in the early morning of 31 October 1982, Reginald Campbell, a shopkeeper living in the district of Sanquinetti, parish of Clarendon, Jamaica. The author and a co-defendant, Errol Johnson, were tried in the Clarendon Circuit Court. On 15 December 1983, they were found guilty as charged and sentenced to death. Their appeal was dismissed by the Court of Appeal of Jamaica on 29 February 1988 and the Court issued its written judgement on 14 March 1988. Author's counsel subsequently endeavoured to petition the Judicial Committee of the Privy Council for special leave to appeal; as of January 1991, a petition had not been filed, owing to the unavailability of relevant court documents.

2.2 The evidence relied on during the trial was circumstantial. On 31 October 1982 at about 9 a.m., the deceased's daughter found her father dead on the floor of a passageway in his shop, where he used to spend his nights. He had been stabbed in the neck, and death had been caused by severance of the right carotid artery and the right jugular vein. Earlier in the morning, the author and his co-defendant had been seen standing across the street from Mr. Campbell's shop by one of the prosecution witnesses, Lawrence Powell. Mr. Powell was acquainted with the author, who asked him for cigarettes. Mr. Powell suggested that the author and Mr. Johnson wait for the opening of Mr. Campbell's shop.

2.3 Later the same morning, another prosecution witness, Errol Carnegie, saw the accused walking along the road from the direction of the deceased's shop, about one mile from the scene of the crime. Errol Johnson was carrying one travelling bag, while the author was carrying two. The author asked Mr. Carnegie to join them and to help them carry the bags, which contained a number of unspecified items. They walked for about two miles, and Mr. Carnegie noted that the author was manifestly nervous, playing around ostentatiously with a knife and trying to hide at the approach of a bus. Subsequently, Mr. Carnegie identified the accused. a/

2.4 On 1 November, the police searched the house inhabited by the accused. In a room occupied by the author, police officers found a brown leather bag with several packs of cigarettes as well as cheques signed by Mr. Campbell. In the room occupied by Mr. Johnson, they found a blue travelling bag with a pair of sneakers. On 12 November 1982, the deceased's daughter was shown these items at the Mandeville police station. She confirmed that the objects seized in the author's room were similar to those sold in her father's store, and that the cheques belonged to her father, who had signed them as chairman of the Area Coffee Industry Board. On this occasion, Errol Johnson made a remark clearly implicating the author in the crime.

2.5 Immediately thereafter, Errol Johnson made a statement to the police. Although he sought to exculpate himself, he did admit that he had been present at the scene of the crime. He added that he was shocked to see that the author had brutally attacked Mr. Campbell. The author allegedly brushed his remonstrations aside and made a remark linked to the deceased's political allegiance.

2.6 During the trial, both the author and Mr. Johnson claimed that they had been elsewhere on the morning in question, and presented alibi evidence to that effect.

Complaint

3.1 The author claims that the judicial proceedings in his case were unfair, both in respect of the preliminary investigation and in respect of the trial in the Clarendon Circuit Court. Thus, he affirms that he was unrepresented on each of the five identification parades on which he was placed after his arrest. No one purportedly was able to identify him on any of the parades.

3.2 The author further submits that his trial was unfair, in that the judge admitted as evidence contradictory statements made by some of the prosecution witnesses. Thus, one witness apparently testified that he had known the author since January 1981, whereas the author could prove that he was in detention at that time, until December 1981, on account of a previous conviction. Another witness testified that he had known the author since 1978, which was also proved to be wrong.

3.3 According to the author, his right to a fair trial had been violated in that four of the jurors allegedly had been close friends of the deceased. It remains unclear, however, whether he alerted his representative to this situation. With respect to legal assistance, the author notes that he was represented during the trial by two legal aid lawyers; he acknowledges that they assisted him adequately in the preparation of his defence and that he had sufficient opportunity to consult with them during the trial.

3.4 According to the author, some of the witnesses whom he had called to testify on his behalf and who were present in court on one day did not testify because they had allegedly been intimidated by one of the investigating officers.

3.5 With respect to the appeal, it is submitted that immediately upon the author's conviction, his lawyer informed him that there were six potential grounds of appeal, the main one being the inadequacy of the judge's instructions to the jury in respect of the identification evidence. According to the author, a prison officer prevented him from filling out the appeal forms in prison. The author complained of this to the Parliamentary Ombudsman, who replied that he had issued the necessary instructions. The author also sought to consult with his lawyer, who ignored, however, his requests for assistance. An appeal was nevertheless filed and dismissed. Thereupon, the author was told by his lawyer that there would be merits in a petition for special leave to appeal to the Judicial Committee of the Privy Council.

3.6 In respect of the requirement of exhaustion of domestic remedies, counsel indicates that in spite of regular and prolonged efforts, copies of relevant court documents necessary to effectively petition the Judicial Committee have not been made available by the State party. In this context, counsel points out that rule 4 of the Judicial Committee's Statutory Instrument, governing the procedure relating to petitions to this body, requires that the judgement from which special leave to appeal is sought be filed with the Registry of the Judicial Committee. Between July 1988 and the autumn of 1990, counsel addressed numerous written requests for copies of the committal papers, the trial transcript and the judgement of the Court of Appeal to the authorities, all of which were unsuccessful. It was not until December 1990 that several court documents were furnished by the State party, including parts of the trial transcript; crucial parts of the trial transcript, however, are missing, including the summing up of the case to the jury by the trial judge. Counsel submits that without the complete trial transcript, a petition to the Judicial Committee will not be an effective remedy within the meaning of the Optional Protocol.

State party's observations

4.1 The State party contends that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, since the author retains the right, under section 110 of the Jamaican Constitution, to petition the

Judicial Committee for special leave to appeal; it adds that legal aid would be available to the author for this purpose under section 3 of the Poor Prisoners' Defence Act.

4.2 The State party further contends that the rules of procedure of the Judicial Committee do not make a written judgement from the Court of Appeal of Jamaica a prerequisite for a petition for special leave to appeal. While rule 4 provides that any petitioner for special leave to appeal must submit the judgement from which leave to appeal is sought, rule 1 defines "judgement" as "decree, order, sentence or decision of any court, judge or judicial officer". Thus, the State party argues, an order or a decision of the Court of Appeal, as distinct from a reasoned judgement, is a sufficient basis for a petition for special leave to appeal to the Judicial Committee. It indicates that the Privy Council has heard petitions on the basis of the order or decision of the Court of Appeal dismissing the appeal. The State party forwards a copy of the judgement of the Court of Appeal, adding that it would have been available, upon request, to author's counsel from the date of its delivery, 14 March 1988.

4.3 Finally, the State party affirms that its judicial authorities are not responsible for such delays in the pursuit of domestic remedies as might have occurred in the case, to the extent that the author would be absolved from availing himself of domestic remedies on the ground that their application has been "unreasonably prolonged".

Issues and proceedings before the Committee

5.1 On the basis of the information before it, the Human Rights Committee concluded that the conditions for declaring the communication admissible had been met. It observed that the author's failure to petition the Judicial Committee of the Privy Council for leave to appeal could not be attributed to him, since relevant court documents, which are a prerequisite for a petition for special leave to appeal to be entertained by the Judicial Committee, had not been made available to the author or his counsel. The Committee further noted that the State party had not complied with the Working Group's request, made on 22 March 1988, to provide the Committee with the texts of the written judgements in the case. It concluded that since the author's and his counsel's sustained efforts to bring the case before the Judicial Committee had been frustrated, the application of domestic remedies had been unreasonably prolonged.

5.2 On 18 July 1989, the Human Rights Committee declared the communication admissible.

5.3 The Committee has considered the State party's submission of 10 January 1990, made after the decision on admissibility, in which it reaffirmed its position that the communication was inadmissible on the ground of non-exhaustion of domestic remedies. It takes the opportunity to expand on its admissibility findings.

5.4 The State party contends that the Judicial Committee of the Privy Council may entertain a petition for leave to appeal even without a written judgement of the Court of Appeal. It bases itself on its interpretation of rule 4 *juncto* rule 1 of the Privy Council's rules of procedure. While the Judicial

Committee's rules of procedure do not exclude this reasoning, it fails to take into account that, for purposes of the Optional Protocol, a judicial remedy must not only be available in theory but must also be effective, that is, have a reasonable prospect of success. The Committee recalls, in this context, that domestic remedies need not be exhausted if they objectively have no prospect of success.

5.5 According to the State party, a copy of the written judgement of the Court of Appeal would have been available to either author or counsel upon request, after its delivery on 14 March 1988. On the other hand, the material placed before the Committee reveals that counsel unsuccessfully requested the court documents in the case on at least two occasions, on 16 December 1988 and 9 February 1989, after it had proved impossible to obtain them from her client's former representatives. The Committee notes that it was only in December 1990 that counsel obtained copies of some court documents, including the judgement of the Court of Appeal. It remains uncontested, however, that the trial transcript is incomplete in crucial parts, including the summing up of the judge. As any prospective petition for leave to appeal to the Judicial Committee would be primarily based on the issue of evaluation of identification evidence by the court of first instance, there was no meaningful prospect in lodging the petition in the absence of a complete set of the trial transcript.

5.6 After considering the material submitted by the parties, the Committee concludes that such delays as have occurred in the pursuit of domestic remedies are not attributable to the author or his counsel, and that counsel was entitled to assume that under the circumstances a petition for leave to appeal to the Privy Council was not available and effective within the meaning of the Optional Protocol. There is, accordingly, no reason to revise the Committee's decision on admissibility of 18 July 1989.

6.1 As to the substance of the author's allegations, the Committee notes with concern that, several requests for clarifications notwithstanding, the State party has confined itself to issues of admissibility, while failing to address the substance of the matter under consideration. Article 4, paragraph 2, of the Optional Protocol enjoins a State party to investigate in good faith all the allegations of violations of the Covenant made against it and its judicial authorities, and to make available to the Committee all the information at its disposal. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been sufficiently substantiated.

6.2 As to the author's claim of judicial bias and prejudice, the Committee reaffirms that it is generally for the appellate courts of States parties to the Covenant to evaluate the facts and evidence in a particular case. It is not in principle for the Committee to review specific instructions to the jury by the judge in a trial by jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality.

6.3 After considering those parts of the judge's instructions that were made available to it, the Committee concludes that the judge's instructions to the jury on 15 December 1983 were neither arbitrary nor amounted to a denial of justice. The Committee has no evidence either that by admitting alleged contradictory statements of prosecution witnesses as evidence, the judge violated his obligation of impartiality. The Committee further notes that the author's allegation that the jury was biased because of the presence of four acquaintances of the deceased has not been supported by any evidence as to whether the author or his counsel sought to challenge these jurors. The Committee, in these circumstances, finds no violation of article 14, paragraph 1, of the Covenant.

6.4 In respect of the author's claim that witnesses on his behalf who would have been available to testify were not called, the Committee is not in a position to ascertain whether the failure of the representative to call these witnesses or, if necessary, to subpoena them, was a matter of professional judgment or of negligence. The evidence before the Committee does not support a finding of a violation of article 14, paragraph 3 (e), of the Covenant.

6.5 Concerning the author's allegation that he was unrepresented on any of the identification parades held in connection with the murder of Mr. Campbell and that he was prevented by a prison officer from properly filing his appeal, the Committee notes that this claim has not been supported by sufficient evidence for it to justify a finding of a violation of article 14, paragraph 3 (d), of the Covenant.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before the Committee, do not disclose a violation of any of the provisions of the International Covenant on Civil and Political Rights.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ It remains unclear whether the identification occurred during an identification parade or during the trial.

D. Communication No. 253/1987, Paul Kelly v. Jamaica (views adopted on 8 April 1991, forty-first session)

Submitted by:	Paul Kelly (represented by counsel)
Alleged victim:	The author
State party concerned:	Jamaica
Date of communication:	15 September 1987
Date of the decision on admissibility:	17 October 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 8 April 1991,

Having concluded its consideration of communication No. 253/1987, submitted to the Committee by Paul Kelly under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communications and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol*

1. The author of the communication (initial submission dated 15 September 1987 and subsequent correspondence) is Paul Kelly, a Jamaican citizen awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of articles 6, paragraph 2; 7; 9, paragraphs 3 and 4; 10; and 14, paragraphs 1 and 3 (a) to (e) and (g), of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted by the author

2.1 The author was arrested and taken into custody on 20 August 1981. He was detained until 15 September 1981 without formal charges being brought against him. Following a statement to the police given on 15 September 1981, he was charged with having murdered Owen Jamieson on 2 July 1981. He was tried with a co-defendant, Trevor Collins, in the Westmoreland Circuit Court between 9 and 15 February 1983. He and Mr. Collins were found guilty of murder and sentenced to death. On 23 February 1983, the author appealed his conviction; on 28 April 1986, the Jamaican Court of Appeal dismissed his appeal without producing a reasoned judgement. On appeal, author's counsel merely stated that he found no merit in arguing the appeal. Because of the absence of a reasoned judgement of the Court of Appeal, the author has refrained from further petitioning the Judicial Committee of the Privy Council for special leave to appeal.

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* Individual opinions submitted by Mr. Waleed Sadi and Mr. Bertil Wennergren, respectively, are appended.

2.2 The evidence relied on during the trial was that on 1 July 1981 the author and Mr. Collins had sold a cow to Basil Miller and had given him a receipt for the sale. According to the prosecution, the cow had been stolen from Mr. Jamieson, who had visited Mr. Miller's home on the afternoon of 1 July and had identified the cow as his property. The accused had then purportedly killed Mr. Jamieson in the belief that he had obtained the receipt from Mr. Miller implicating them in the theft of the cow.

2.3 During the trial, the prosecution adduced certain evidence against the author and his co-defendant: (a) blood-stained clothing that was found in a latrine at the house where the accused lived; (b) the presence of a motive; and (c) the oral evidence tendered by the sister of the author and the brother of Trevor Collins. In particular, the testimony of the author's sister was important as to the identification of the clothes found in the latrine. According to the prosecution, the author and Mr. Collins had fled the district after the murder. Mr. Collins' brother testified that the accused had borrowed a suitcase from him in the early hours of the morning following the murder.

2.4 The author challenged the prosecution's contention that his statement of 15 September 1981 had been a voluntary one. In an unsworn statement from the dock, he claimed to have been beaten by the police, who had tried to force him to confess to the crime. He affirms that the police tried to have him sign a "blanko" confession, and that he withstood the beatings and refused to sign any papers presented to him. He further maintains that he never made a statement to the police and that he knows nothing about the circumstances of Mr. Jamieson's death.

Complaint

3.1 The author alleges a violation of articles 7 and 14, paragraph 3 (g), of the Covenant on the ground that he was threatened and beaten by the police, who tried to make him give and sign a confession. Although the police sought to dismiss his version during the trial, the author contends that several factors support his claim: his "voluntary confession" was not obtained until nearly four weeks after his arrest; no independent witness was present at the time when he purportedly confessed and signed his statement; and there were numerous inconsistencies in the prosecution's evidence relating to the manner in which his statement was obtained.

3.2 The author further notes that 26 days passed between his arrest (20 August 1981) and the filing of formal charges against him (15 September 1981). During this time, he claims, he was not allowed to contact his family nor to consult with a lawyer, in spite of his requests to meet with one. After he was charged, another week elapsed before he was brought before a judge. During this period, his detention was under the sole responsibility of the police, and he was unable to challenge it. This situation, he contends, reveals violations of article 9, paragraphs 3 and 4, in that he was not "brought promptly before a judge or other officer authorized by law to exercise judicial power", and because he was denied the means of challenging the lawfulness of his detention during the first five weeks following his arrest.

3.3 According to the author, the State party violated article 14, paragraph 3 (a), because he was not informed promptly and in detail of the nature of the charges against him. Upon his arrest, he was held for several days at the central lock-up at Kingston, pending "collection" by the Westmoreland police, and merely told that he was wanted in connection with a murder investigation. Further details were not forthcoming even after his transfer to Westmoreland. It was only on 15 September 1981 that he was informed that he was charged with the murder of Owen Jamieson.

3.4 The author submits that article 14, paragraph 3 (b), was violated in his case, since he was denied adequate time and facilities for the preparation of his defence, had no or little opportunity to communicate with counsel representing him at trial and on appeal, both before and during trial and appeal, and because he was unable to defend himself through legal assistance of his own choosing. In this context, he notes that he experienced considerable difficulty in obtaining legal representation. Counsel assigned to him during the trial did not meet with him until the opening day of the trial; moreover, this meeting lasted a mere 15 minutes, during which it was virtually impossible for counsel to prepare the author's defence in any meaningful way. During the trial, he could not consult with the lawyers for more than a total of seven minutes, which means that preparation of the defence prior to and during the trial was restricted to 22 minutes. He points out that the lack of time for the preparation of the trial was extremely prejudicial to him, in that his lawyer could not prepare proper submissions on his behalf in relation to the admissibility of his "confession statement", or prepare properly for the cross-examination of witnesses. As to the hearing of the appeal, the author contends that he never met with, or even instructed, his counsel, and that he was not present during the hearing of the appeal.

3.5 The author also alleges that article 14, paragraph 3 (d), was violated. In this connection, he notes that, as he is poor, he had to rely on legal aid lawyers for the judicial proceedings against him. While he concedes that this situation does not in itself reveal a breach of article 14, paragraph 3 (d), he submits that the inadequacy of the Jamaican legal aid system, which resulted in substantial delays in securing suitable legal representation, does amount to a breach of this provision. He further notes that as he did not have an opportunity to discuss his case with the lawyers assigned to his appeal, he could not possibly know that this lawyer intended to withdraw the appeal and thus could not object to his intentions. He adds that had he been apprised of the situation, he would have sought other counsel.

3.6 The author contends that he has been the victim of a violation of article 14, paragraph 3 (c), in that he was not tried without undue delay. Thus, almost 18 months elapsed between his arrest and the start of the trial. During the whole period, he was in police custody. As a result, he was prevented from carrying out his own investigations, which might have assisted him in preparing his defence, given that court-appointed legal assistance was not immediately forthcoming.

3.7 In the author's opinion, he was denied a fair hearing by an independent and impartial tribunal, in violation of article 14, paragraph 1, of the Covenant. Firstly, he contends that he was poorly represented by the two legal aid lawyers who were assigned to him for the trial and the appeal. His representative during the trial, for instance, allegedly never was in a position to present his defence constructively; his cross-examination of prosecution witnesses was superficial, and he did not call witnesses on the author's behalf, although the author notes that his aunt, Mrs. Black, could have corroborated his alibi. Furthermore, counsel did not call for the testimony of a woman - the owner of the house where the accused had lived - who had given the police information leading to the author's arrest. This, he submits, constitutes a violation of article 14, paragraph 3 (e). Secondly, the author alleges bias and prejudice on the part of the trial judge. The latter allegedly admitted hearsay evidence presented by Basil Miller and several other witnesses. When author's counsel opened his defence statement, the judge reaffirmed his desire to dispose of the case expeditiously, while he refrained from similar attempts to curtail the presentation of the prosecution's case. He allegedly made disparaging remarks related to the case for the defence, thus undermining the presumption of innocence. Finally, the judge's conduct of the voir dire in connection with the determination of the voluntary character of the author's confession is said to have been "inherently unfair".

3.8 Finally, the author affirms that he is the victim of a violation of article 10 of the Covenant, since the treatment he is subjected to on death row is incompatible with the respect for the inherent dignity of the human person. In this context, he encloses a copy of a report about the conditions of detention on death row at St. Catherine Prison, prepared by a United States non-governmental organization, which describes the deplorable living conditions prevailing on death row. More particularly, the author claims that these conditions put his health at considerable risk, adding that he receives insufficient food, of very low nutritional value, that he has no access whatsoever to recreational or sporting facilities and that he is locked in his cell virtually 24 hours a day. It is further submitted that the prison authorities do not provide for even basic hygienic facilities, adequate diet, medical or dental care, or any type of educational services. Taken together, these conditions are said to constitute a breach of article 10 of the Covenant. The author refers to the Committee's jurisprudence in this regard. a/

3.9 In respect of the requirement of exhaustion of domestic remedies, the author maintains that although he has not petitioned the Judicial Committee of the Privy Council, he should be deemed to have complied with the requirements of article 5, paragraph 2 (b), of the Optional Protocol. He notes that pursuant to rule 4 of the Privy Council rules, a written judgement of the Court of Appeal is required if the Judicial Committee is to entertain an appeal.

3.10 The author further points out that he was unaware of the existence of the Note of Oral Judgement until almost three years after the dismissal of his appeal, and counsel adds that the trial transcript obtained in October 1989 is incomplete in material respects, including the summing-up of the judge, which further hampers efforts to prepare properly an appeal to the Privy Council. Subsidiarily, he argues that as almost eight years have already elapsed since his conviction, the pursuit of domestic remedies has been unreasonably prolonged. Finally, he argues that a constitutional motion in the Supreme (Constitutional) Court of Jamaica would inevitably fail, in the light of the precedent set by the Judicial Committee's decisions in DPP v. Nasralla b/ and Riley et al. v. Attorney General of Jamaica, c/ where it was held that the Jamaican Constitution was intended to prevent the enactment of unjust laws and not merely unjust treatment under the law.

State party's observations

4.1 The State party contends that the communication is inadmissible because of the author's failure to exhaust domestic remedies, since he retains the right, under section 110 of the Jamaican Constitution, to petition the Judicial Committee of the Privy Council for special leave to appeal. In this context, it points out that the rules of procedure of the Judicial Committee do not make a written judgement of the Court of Appeal a prerequisite for a petition for leave to appeal. While rule 4 provides that any petitioner for special leave to appeal must submit the judgement from which leave to appeal is sought, rule 1 defines "judgement" as "decree order, sentence or decision of any court, judge or judicial officer". Thus, the State party argues, an order or a decision of the Court of Appeal, as distinct from a reasoned judgement, is a sufficient basis for a petition for special leave to appeal to the Judicial Committee. It adds that the Privy Council has heard petitions on the basis of the order or decision of the Court of Appeal dismissing the appeal.

4.2 With respect to the substance of the author's allegations, the State party affirms that the facts as presented by the author "seek to raise issues of facts and evidence in the case which the Committee does not have the competence to evaluate". The State party refers to the Committee's decisions in communications 290/1988 and 369/1989, in which it had been held that "while article 14 ... guarantees the right to a fair trial, it is for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case". d/

Issues and proceedings before the Committee

5.1 On the basis of the information before it, the Human Rights Committee concluded that the conditions for declaring the communication admissible had been met, including the requirement of exhaustion of domestic remedies. In this respect, the Committee considered that a written judgement of the Court of Appeal of Jamaica was a prerequisite for a petition for special leave to appeal to the Judicial Committee of the Privy Council. It observed that in the circumstances, author's counsel was entitled to assume that any petition for special leave to appeal would inevitably fail because of the lack of a reasoned judgement from the Court of Appeal; it further recalled that domestic remedies need not be exhausted if they objectively have no prospect of success.

5.2 On 17 October 1989, the Human Rights Committee declared the communication admissible.

5.3 The Committee has noted the State party's submissions of 8 May and 4 September 1990, made after the decision on admissibility, in which it reaffirms its position that the communication is inadmissible on the ground of non-exhaustion of domestic remedies. The Committee takes the opportunity to expand on its admissibility findings, in the light of the State party's further observations. The State party has argued that the Judicial Committee of the Privy Council may hear a petition for special leave to appeal even in the absence of a written judgement of the Court of Appeal; it bases itself on its interpretation of rule 4 juncto rule 1 of the Privy Council's Rules of Procedure. It is true that the Privy Council has heard several petitions concerning Jamaica in the absence of a reasoned judgement of the Court of Appeal, but, on the basis of the information available to the Committee, all of these petitions were dismissed because of the absence of a reasoned judgement of the Court of Appeal. There is therefore no reason to revise the Committee's decision on admissibility of 17 October 1989.

5.4 As to the substance of the author's allegations of violations of the Covenant, the Committee notes with concern that several requests for clarifications notwithstanding, the State party has confined itself to the observation that the facts as submitted seek to raise issues of facts and evidence that the Committee is not competent to evaluate; it has not addressed the author's specific allegations under articles 7, 9, 10 and 14, paragraph 3, of the Covenant. Article 4, paragraph 2, of the Optional Protocol enjoins a State party to investigate in good faith all the allegations of violations of the Covenant made against it and its judicial authorities, and to make available to the Committee all the information at its disposal. The summary dismissal of the author's allegations, in general terms, does not meet the requirements of article 4, paragraph 2. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been sufficiently substantiated.

5.5 As to the claim under articles 7 and 14, paragraph 3 (g), of the Covenant, the Committee notes that the wording of article 14, paragraph 3 (g) - i.e., that no one shall "be compelled to testify against himself or to confess guilt" - must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. A fortiori, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession. In the present case, the author's claim has not been contested by the State party. It is, however, the Committee's duty to ascertain whether the author has sufficiently substantiated his allegation, notwithstanding the State party's failure to address it. After careful consideration of this material, and taking into account that the author's contention was successfully challenged by the prosecution in court, the Committee is unable to conclude that the investigating officers forced the author to confess his guilt, in violation of articles 7 and 14, paragraph 3 (g).

5.6 In respect of the allegations pertaining to article 9, paragraphs 3 and 4, the State party has not contested that the author was detained for some five weeks before he was brought before a judge or judicial officer entitled to decide on the lawfulness of his detention. The delay of over one month violates the requirement, in article 9, paragraph 3, that anyone arrested on a criminal charge shall be brought "promptly" before a judge or other officer authorized by law to exercise judicial power. The Committee considers it to be an aggravating circumstance that, throughout this period, the author was denied access to legal representation and any contact with his family. As a result, his right under article 9, paragaph 4, was also violated, since he was not in due time afforded the opportunity to obtain, on his own initiative, a decision by the court on the lawfulness of his detention.

5.7 Inasmuch as the author's claim under article 10 is concerned, the Committee reaffirms that the obligation to treat individuals with respect for the inherent dignity of the human person encompasses the provision of, inter alia, adequate medical care during detention. a/ The provision of basic sanitary facilities to detained persons equally falls within the ambit of article 10. The Committee further considers that the provision of inadequate food to detained individuals and the total absence of recreational facilities does not, save under exceptional circumstances, meet the requirements of article 10. In the author's case, the State party has not refuted the author's allegation that he has contracted health problems as a result of a lack of basic medical care, and that he is only allowed out of his cell for 30 minutes each day. As a result, his right under article 10, paragraph 1, of the Covenant has been violated.

5.8 Article 14, paragraph 3 (a), requires that any individual under criminal charges shall be informed promptly and in detail of the nature and the charges against him. The requirement of prompt information, however, only applies once the individual has been formally charged with a criminal offence. It does not apply to those remanded in custody pending the result of police investigations; the latter situation is covered by article 9, paragraph 2, of the Covenant. In the present case, the State party has not denied that the author was not apprised in any detail of the reasons for his arrest for several weeks following his apprehension and that he was not informed about the facts of the crime in connection with which he was detained or about the identity of the victim. The Committee concludes that the requirements of article 9, paragraph 2, were not met.

5.9 The right of an accused person to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and an important aspect of the principle of equality of arms. In cases in which a capital sentence may be pronounced on the accused, it is axiomatic that sufficient time must be granted to the accused and his counsel to prepare the defence for the trial. The determination of what constitutes "adequate time" requires an assessment of the individual circumstances of each case. The author also contends that he was unable to obtain the attendance of witnesses. It is to be noted, however, that the material before the Committee does not disclose whether either counsel or author complained to the trial judge that the time or facilities were inadequate. Furthermore, there is no indication that counsel decided not to call witnesses in the exercise of his professional judgement, or that, if a request to call witnesses was made, the trial judge disallowed it. The Committee therefore finds no violation of article 14, paragraph 3 (b) and (e).

5.10 As to the issue of the author's representation, in particular before the Court of Appeal, the Committee recalls that it is axiomatic that legal assistance should be made available to a convicted prisoner under sentence of death. This applies to all the stages of the judicial proceedings. In the author's case, it is clear that legal assistance was assigned to him for the appeal. What is at issue is whether his counsel had a right to abandon the appeal without prior consultation with the author. The author's application for leave to appeal to the Court of Appeal, dated 23 February 1983, indicates that he did not wish to be present during the hearing of the appeal, but that he wished legal aid to be assigned for this purpose. Subsequently, and without previously consulting with the author, counsel opined that there was no merit in the appeal, thus effectively leaving the author without legal representation. The Committee is of the opinion that while article 14, paragraph 3 (d), does not entitle the accused to choose counsel provided to him free of charge, measures must be taken to ensure that counsel, once assigned, provides effective representation in the interests of justice. This includes consulting with, and informing, the accused if he intends to withdraw an appeal or to argue before the appeals court that the appeal has no merit.

5.11 With respect to the claim of "undue delay" in the proceedings against the author, two issues arise. The author contends that his right, under article 14, paragraph 3 (c), to be tried without "undue delay" was violated because almost 18 months elapsed between his arrest and the opening of the trial. While the Committee reaffirms, as it did in its general comment on article 14, that all stages of the judicial proceedings should take place without undue delay, it cannot conclude that a lapse of a year and a half between the arrest and the start of the trial constituted "undue delay", as there is no suggestion that pre-trial investigations could have been concluded earlier, or that the author complained in this respect to the authorities.

5.12 However, because of the absence of a written judgement of the Court of Appeal, the author has, for almost five years since the dismissal of his appeal in April 1986, been unable effectively to petition the Judicial Committee of the Privy Council, as shown in paragraph 5.3 above. This, in the Committee's opinion, entails a violation of article 14, paragraph 3 (c), and article 14, paragraph 5. The Committee reaffirms that in all cases, and in particular in capital cases, the accused is entitled to trial and appeal proceedings without undue delay, whatever the outcome of these judicial proceedings may turn out to be. e/

5.13 Finally, inasmuch as the author's claim of judicial bias is concerned, the Committee reiterates that it is generally for the appellate courts of States parties to the Covenant to evaluate the facts and evidence in a particular case. It is not in principle for the Committee to review specific instructions to the jury by the judge in a trial by jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The Committee does not have sufficient evidence that the author's trial suffered from such defects.

5.14 The Committee is of the opinion that the imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is available, a violation of article 6 of the Covenant. As the Committee noted in its general comment 6 (16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal". In the present case, while a petition to the Judicial Committee is in theory still available, it would not be an available remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, for the reasons indicated in paragraph 5.3 above. Accordingly, it may be concluded that the final sentence of death was passed without having met the requirements of article 14, and that as a result, the right protected by article 6 of the Covenant has been violated.

6. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before the Committee disclose violations of articles 6, 9, paragraphs 2 to 4, 10 and 14, paragraphs 3 (c) and (d) and 5 of the Covenant.

7. It is the view of the Committee that, in capital punishment cases, States parties have an imperative duty to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant. The Committee is of the view that Mr. Paul Kelly, victim of a violation of article 14, paragraphs 3 (c) and (d) and 5 of the Covenant, is entitled to a remedy entailing his release.

8. The Committee would wish to receive information on any relevant measures taken by the State party in respect of the Committee's views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See final views in para. 12.7 of communication No. 232/1987 (Daniel Pinto v. Trinidad and Tobago), adopted on 20 July 1990.

b/ [1967] 2 All ER, at 161.

c/ [1982] 3 All ER, at 469.

d/ Decisions of 8 November 1989, 290/1988 (A.W. v. Jamaica), para. 8.2; 369/1989 (G.S. v. Jamaica), para. 3.2.

e/ See, for example, the final views of the Committee in communications Nos. 210/1986 and 225/1987, para. 13.5, (Earl Pratt and Ivan Morgan), adopted on 6 April 1989.

APPENDIX I

Individual opinion submitted by Mr. Waleed Sadi pursuant to rule 94, paragraph 3, of the Committee's rules of procedure concerning the Committee's views on communication No. 253/1987, Paul Kelly v. Jamaica

I respectfully submit hereafter a separate opinion to the views adopted by the Human Rights Committee on 8 April 1991 with regard to communication No. 253/1987, submitted by Paul Kelly against Jamaica. In the Committee's view, the complainant was a victim of a violation of, *inter alia*, article 14, paragraph 3 (d), of the Covenant, in the sense that he was essentially deprived of effective representation, as called for in a said provision, because court-appointed counsel did not pursue Mr. Kelly's right of appeal properly by deciding against pursuing it without prior consultation with his client. The central issue which the Committee had to determine is whether any error of judgement by the complainant's legal counsel may be imputed to the State party, and therefore render it responsible for the alleged errors of counsel and accordingly serve as a ground to order the release of the victim from imprisonment and thus escape from the sentence imposed upon him by the Westmoreland Circuit Court for a murder committed on 2 July 1981.

While sharing the view of the Committee that in proceedings for serious crimes, especially capital punishment cases, a fair trial for accused persons must provide them with effective legal counsel if the accused are unable to retain private counsel, the responsibility of the State party in providing legal counsel may not go beyond the responsibility to act in good faith in assigning legal counsel to accused individuals. Any errors of judgement by court-appointed counsel cannot be attributed to the State party any more than errors by privately retained counsel can be. In an adversary system of litigation, it is unfortunate that innocent people go to the gallows for mistakes made by their lawyers, just as criminals may escape the gallows simply because their lawyers are clever. This flaw runs deep into the adversary system of litigation applied by the majority of States parties to the Covenant. If court-appointed lawyers are held accountable to a higher degree of responsibility than their private counterparts, and thus the State party is made accountable for any of their own errors of judgement, then, I am afraid, the Committee is applying a double standard.

I therefore beg to differ with the Committee's view that the author should be released on account of the alleged errors made by counsel assigned to him for the appeal. I would have been open to suggestions of other remedies to be granted to the complainant, including declaring a mistrial or calling for another judicial review of his case by the appellate court to determine the matter of alleged gross errors made by his counsel.

Waleed SADI

APPENDIX II

Individual opinion submitted by Mr. Bertil Wennergren pursuant to rule 94, paragraph 3, of the Committee's rules of procedure concerning the Committee's views on communication No. 253/1987, Paul Kelly v. Jamaica

I concur in the views expressed in the Committee's decision. However, in my opinion, the arguments in paragraph 5.6 should be expanded.

Anyone deprived of his liberty by arrest or detention shall, according to article 9, paragraph 4, of the Covenant, be entitled to take proceedings before a court. In addition, article 9, paragraph 3, ensures that anyone arrested or detained on criminal charges shall be brought before a judge or other officer authorized by law to exercise judicial power. A similar right is contained in article 5 of the European Convention on Human Rights, which is applicable to the "lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence, or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so."

The author was arrested and taken into custody on 20 August 1981; he was detained *incommunicado*. On 15 September 1981 he was charged with murder; only one week later was he brought before a judge.

While article 9, paragraph 1, of the Covenant covers all forms of deprivation of liberty by arrest or detention, the scope of application of paragraph 3 is limited to arrests and detentions "on a criminal charge". It would appear that the State party interprets this provision in the sense that the obligation of the authorities to bring the detainee before a judge or judicial officer does not arise until a formal criminal charge has been served to him. It is, however, abundantly clear from the *travaux préparatoires* that the formula "on a criminal charge" was meant to cover as broad a scope of application as the corresponding provision in the European Convention. All types of arrest and detention in the course of crime prevention are therefore covered by the provision, whether it is preventive detention, detention pending investigation or detention pending trial. The French version of the paragraph ("détenu du chef d'une infractin pénale") conveys this meaning better than the English version.

It should be noted that the words "shall be brought promptly" reflect the original form of *habeas corpus* ("Habeas corpus NN ad sub-judiciendum") and order the authorities to bring a detainee before a judge or judicial officer as soon as possible, independently of the latter's express wishes in this respect. The word "promptly" does not permit a delay of more than two to three days.

As the author was not brought before a judge until about five weeks had passed since his detention, the violation of article 9, paragraph 3, of the Covenant is flagrant. The fact that the author was held *incommunicado* until he was formally charged deprived him of his right, under article 9, paragraph 4, to file an application of his own for judicial review of his detention by a court. Accordingly, this provision was also violated.

Bertil **WENNERGREN**

E. Communications Nos. 298/1988 and 299/1988, G. and L. Lindgren and L. Holm and A. and B. Hjord, E. and I. Lundquist, L. Radko and E. Stahl v. Sweden (views adopted on 9 November 1990, fortieth session)

Submitted by:	G. and L. Lindgren and L. Holm A. and B. Hjord, E. and I. Lundquist, L. Radko and E. Stahl (represented by counsel)
Alleged victims:	The authors
State party concerned:	Sweden
Date of communication:	25 May 1988
Date of the decisions on admissibility:	30 March 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 9 November 1990,

Having concluded its consideration of communications Nos. 298/1988 and 299/1988, submitted to the Committee by G. and L. Lindgren and L. Holm and A. and B. Hjord et al. under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communications and by the State party,

Adopts the following:

Decision to deal jointly with two communications

The Human Rights Committee,

Considering that communications Nos. 298/1988 and 299/1988 refer to closely related events affecting the authors,

Considering further that the two communications can appropriately be dealt with together,

1. Decides, pursuant to rule 88, paragraph 2, of its rules of procedure, to deal jointly with these communications;

2. Further decides that this decision shall be communicated to the State party and the authors of the communications.

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communication (initial letters dated 25 May 1988 and subsequent correspondence) are G. and L. Lindgren and L. Holm (communication No. 298/1988), A. and B. Hjord, E. and I. Lundquist, L. Radko and E. Stahl (communication No. 299/1988), Swedish citizens residing in the municipalities of Norrköping and Upplands-Bro, Sweden. They claim to be victims of a violation by the Government of Sweden of article 26 of the International Covenant on Civil and Political Rights. They are represented by counsel.

2.1 The authors are the parents of children who attend the private Rudolf Steiner School in Norrköping and the Ellen Key School in Stockholm. For the school year 1987/88 they applied to the municipality of Norrköping for financial aid for the purchase of their children's textbooks and to the municipality of Upplands-Bro for financial aid for their children's school meals and for the purchase of their textbooks. On 20 April 1988 and 10 February 1988, respectively, their applications were rejected. The authors did not appeal and therefore the decisions became final.

2.2 The authors consider that the rejection of financial aid constitutes a violation of article 26 of the Covenant since the kind of financial aid they applied for, the so-called School Social Aid (SSA), is normally granted by Swedish municipalities regardless of whether the children are attending private or public schools. Such aid is allegedly intended to relieve the parents of the additional expenses they face because of the compulsory school attendance of their children. Since, pursuant to the Parents' Code, parents must support their children, who are under an obligation to attend comprehensive school, the Swedish legislature considers financial aid to be a social benefit and complementary to child allowances.

2.3 Children may attend either a public or a recognized private school in order to satisfy the requirement of compulsory school attendance. According to the authors, the award of free or subsidized textbooks and of free school meals is neither exempted from the scope of the equality rule nor from the scope of article 26 of the Covenant.

2.4 The Supreme Administrative Court has considered "SSA" to constitute services provided free of charge. This, the authors claim, is incorrect, since it is financed out of the municipal income tax, borne by all residents of the municipality. They further allege that, for ordinary Swedish families, public grants ensure a basic standard of living. "SSA", therefore, constitutes a supplementary, tax-free income. Parents receiving "SSA" are said to be put in a better economic situation vis-à-vis parents who do not receive such aid. The authors consider this fact to compound the discriminatory effect of the municipality's refusal to grant them "SSA".

2.5 Since 1958, the decision to award financial aid has been delegated by the central Government to the municipal authorities. Pursuant to the Local Government Act, municipal authorities are prohibited from treating residents differently on any other than on objective bases, so as to ensure equality of treatment in the application of the law.

2.6 The authors claim that there is discrimination between their children and the pupils of public schools or private schools receiving financial aid. This difference in treatment is possible because the local authorities are under no legal obligation to grant financial aid to private schools, which renders the system arbitrary.

2.7 The authors claim that they have exhausted domestic remedies for purposes of article 5, paragraph 2 (b) of the Optional Protocol. In the light of a 1970 landmark decision of the Supreme Administrative Court rejecting an appeal filed by parents who complained about the denial of "SSA", the authors contend that an appeal would be futile, especially considering that all similar appeals following the 1970 decision have been rejected.

3. By decisions dated 8 July 1988, the Working Group of the Human Rights Committee transmitted the communications under rule 91 of the rules of procedure to the State party, requesting information and observations relevant to the question of admissibility. In this context, it asked the State party to provide the Committee with the rules and regulations governing the granting and use of financial aid for private schools or their pupils in respect of school meals and teaching aids.

4.1 In its submissions under rule 91, dated 22 November 1988, the State party objected to the admissibility of the communications under article 3 of the Optional Protocol, on grounds of lack of merit. It admitted, however, that domestic remedies had been exhausted within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, since the legal situation in Sweden is such that any appeal would have been futile.

4.2 The State party submits that the Swedish school system is regulated by the 1985 School Act (Skollagen 1985:1100). Sweden operates a uniform public school system comprising a compulsory basic school for pupils aged 7-16 years. The duty to attend school corresponds to the right to receive education within the framework of the public school system (chap. 3, sect. 1, of the 1985 Act). The duty to attend school shall, in principle, be fulfilled by attending a public school. Exceptions to this rule are Sami schools, approved independent schools (private schools) and national boarding schools (chap. 3, sect. 2, of the 1985 Act). The Act stipulates that the obligation to attend school may be satisfied through attendance at a private school approved for that purpose by the local school board. The Act provides that approval shall be granted if the school in question provides education of a quality that corresponds to that of the compulsory basic school.

4.3 The 1985 Act provides that basic compulsory school shall be free of charge for pupils (chap. 4, sect. 15). In particular, books, writing utensils and other aids shall be provided to the pupils free of charge. The local government of each municipality is charged with the responsibility of providing education that meets the standards set by the State and to finance this public sector school system (chap. 4, sect. 6). In Sweden the municipalities enjoy a wide measure of autonomy with respect to their own elected municipal assembly and finance their own operations through taxation of their residents. Each municipality determines its own tax rate and the revenue constitutes the municipality's main source of income. Tax rates vary according to the needs and the financial situation of each municipality. The municipalities receive certain contributions from the State towards the expenses for the maintenance of the public school system. These contributions go primarily to the salaries of the staff. No particular grant is given to cover expenses for the purchase of textbooks or for provision of school meals. These are, as a result, borne by the municipalities.

4.4 The possibility for an approved private school at the compulsory school level to obtain State grants is regulated in decree 1983:97. Pursuant to it, the State may, upon application from the school, grant such aid, in practice when the school has been functioning for approximately three years. The grant is given as a fixed sum per pupil and differs depending on the educational level reached by the pupil. The grant can be subject to certain conditions. In principle, the school may be open to all and have reasonable fees and a pedagogic plan approved by the National Board of Education.

4.5 Decree 1967:270 on Private Schools and decree 1988:681 on State Grants for National Boarding Schools and Certain Private Schools apply to large private schools, which provide education at both the basic and higher levels. The grants are calculated in an exact manner, which resembles the method used for grants for the public sector schools in a municipality. The 1967 decree applies to the Ellen Key School in Stockholm and to the Rudolf Steiner School in Norrköping.

4.6 There are no particular rules concerning grants from municipalities to private schools or their pupils. The municipality must decide on these matters on the basis of the general rules of competence. The decision is subject to appeal in accordance with a special procedure.

4.7 The State adds that in Sweden a so-called general child grant (barnbidrag) is provided for children under 16 years of age. This grant is paid to the custodian of the child and at present amounts to 450 Swedish kroner per month. For children above 16 years attending school or higher level schools, study aid is granted up to the age of 20 years. The State designates the establishments where pupils are entitled to receive such study aid (1973 Act, chap. 3, sect. 1).

4.8 According to the State party, it cannot reasonably follow from article 26 of the Covenant that the State or a municipality should cover expenses incurred by attendance at a private school, voluntarily chosen by the student, instead of the corresponding public school. Failure to grant aid cannot constitute a discriminatory act within the meaning of article 26. Private schools are available, and any difference in the legal and/or financial situation of these schools and their pupils is laid down in a manner compatible with article 26.

4.9 With regard to the equality principle in municipal matters, the State party submits that this principle cannot change the fact that there is no statutory obligation for municipalities to grant private schools or their pupils financial aid. Consequently, a decision not to concede grants cannot be qualified as discriminatory.

4.10 Concerning the allegation of discrimination compared with pupils of other private schools, the State party submits that the decisions involved fall under the competence of the municipalities, which enjoy a large degree of autonomy. The legislation is based on the concept that the local authorities are best placed to take decisions relating to educational matters in their district. The difference in treatment that may result from this independence is, according to the State party, based on objective and reasonable criteria.

5.1 In their comments dated 21 December 1988, the authors note that "parents" are not mentioned at all in the State party's submissions, although parents are the citizens being treated differently financially in spite of their identical obligation under the Parents' Code.

5.2 As regards textbooks, the authors contend that the legal duty imposed on parents to have their children attend school implies that expenses should be shared equally by all parents, regardless of the type of school chosen. Free textbooks are intended to relieve parents from their obligations under the Parents' Code and to eliminate unjust distinctions between families. "SSA" is not intended to subsidize education, but to ease the family budget generally. Consequently, it is in this purely social context that discrimination has occurred.

6.1 Before considering any claims in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement. The Committee noted that the State party did not contest the admissibility of the communication with respect to article 5, paragraph 2 (b), of the Optional Protocol. The Committee therefore concluded that, on the basis of the information before it, the requirements of article 5, paragraph 2, of the Optional Protocol, concerning prior exhaustion of domestic remedies, had been met.

6.3 With regard to the State Party's submission that the "lack of merit" in the author's argumentation should be considered as sufficient to declare the communication inadmissible pursuant to article 3 of the Optional Protocol, the Committee recalled that article 3 provides that communications shall be declared inadmissible if they: (a) are anonymous, (b) constitute an abuse of the right of submission, or (c) are incompatible with the provisions of the Covenant. It observed that the authors had made a reasonable effort to substantiate their allegations, for purposes of admissibility, and that they had invoked a specific provision of the Covenant. Accordingly, the Committee decided that the issues before it should be examined on the merits.

7. On 30 March 1989 the Human Rights Committee therefore decided that the communications were admissible.

8.1 In its submissions under article 4, paragraph 2, of the Optional Protocol, dated 12 October 1989, the State party indicates that it does not approve the use by counsel of the term "School Social Aid" (SSA) since the term might convey a wrong impression that the financial aid in question is a specific and clearcut form of social assistance. The State party recalls that in Sweden there exists a uniform public sector school system conceived to serve the entire pouplation of the country and that, in principle, the duty to attend school prescribed by law is to be fulfilled within the framework on the public school system. The legislation here at issue is aimed at providing equal education for children all over the country and also reflects the political will to provide all children with an opportunity to attend the public sector education system. Accordingly, fulfilling the duty to attend school in schools other than those envisaged by the public sector must be seen as an exception to the general rule. In this context, the State party points out that there are relatively few private schools that qualify as a valid substitute to the compulsory part of the public sector school system. It is further submitted that the existing public school system has not disregarded the fact that people in Sweden might have different values in so far as education is concerned. In this connection, the State party quotes from a statement made in the context of the 1980 Teaching Plan for the compulsory basic school, "Aims and Directives", where, inter alia, it is stressed that "... Schools should be open to the presentation of different values and opinions and stress the importance of personal concern". Moreover, it points out that the same objective is contemplated by the School Act of 1985, which, in Ch. 3, Sec. 2, provides that a school may, at the request of a custodian of a pupil under the duty to attend school, dispense such a pupil from the obligation to attend otherwise compulsory activities in the educational programme of that school. These are but a few examples to demonstrate that the public sector school system in Sweden is intended and conceived to serve the needs of the whole population of Sweden and that, therefore, it is not necessary to establish a parallel school system.

8.2 The State party further argues that the compulsory part of the public sector school system remains always open to all children who are subject to the duty to attend school and that parents who have chosen to have their children fulfil their duty in alternative schools retain the right to request that their children be integrated within the public sector school system. This stems from the aim of the legislator that the duty to attend school should in principle be fulfilled within the framework of the public sector school system. Accordingly, it is contended that it cannot be reasonably expected that a municipality should organize both the public sector school system, which is open to all children, and at the same time contribute towards covering the costs of privately organized schools. The State party acknowledges that certain municipalities may have agreed to contribute to the activities of certain private schools. Such contributions are granted for purposes of covering costs for school-books, school meals and medical care at school and are given either in the form of a grant of money or by granting pupils in a private school the possibility of having meals or visiting health care facilities. The municipal support of private schools, however, varies from one municipality to another or it may also differ from one school to another within the same municipality. This depends on the interest that the school represents in the eye of the municipal board, but, more importantly, on the great liberty that a municipality enjoys when deciding whether and to what extent it intends to support a private school. In this context, the State party adds that, according to a number of decisions by the Supreme Administrative Court of Sweden, it does not, in principle, fall under the competence of a municipality to grant contributions to matters which are of no particular general interest to the inhabitants of the municipality. The State party therefore reiterates its contention that no violation of the Covenant has occurred in any of the respects alleged by the authors.

9.1 In their comments dated 22 December 1989, the authors observe that the State party's submissions focus on "education" and the "public school system" in order to divert attention from the authors' argument that the assistance at issue does not relate to education, but is intended to relieve parents from their obligations under the Parents' Code Act within a purely social context.

They reiterate that the substance of the matter under consideration remains the differentiation between parents with regards to social benefits granted as personal relief of their obligations under the Parents' Code and points out that the State party, by referring to municipal contributions to private schools for purposes of covering their costs or supporting their activities, clearly shows no inclination to admit that such social benefits - free meals and textbooks - are granted to individuals.

9.2 As to the form of the assistance under consideration, authors argue that, contrary to what the State party maintains, it is easily definable. They refer to the Government's annual decrees on Intermunicipal Compensation that determine the per capita amount relating to free meals and textbooks applicable to pupils attending the public sector schools of Sweden. The Decrees relating to the school years 1987/1988 and 1988/1989 are based on statistical figures concerning costs of meals, textbooks and other items, as compiled by the Sweden Association of Local Authorities. As to the value of this assistance, it is submitted that, independently of its various forms, the financial aid pertaining to pupils attending private schools is easily transformable into fixed amounts of money. In fact, since 1946 most Swedish municipalities (and not "certain" municipalities as the State party contents) administer this form of social assistance to parents on an equal basis.

9.3 In addressing the State party's argument that "according to a number of decisions of the Supreme Administrative Court, it does not in principle fall under the competence of a municipality to grant contributions to matters that are of no particular general interest to the inhabitants of the municipality", the authors point out that the matters referred to are not spelled out by the State party. In this respect, they add that since the beginning of this century it has been considered of general interest that Swedish municipalities provide all children within their boundaries with meals and basic textbooks.

9.4 With regard to the public costs for school meals and textbooks, the authors challenge the State party's statement according to which it cannot be reasonably expected that a municipality should organize the public sector school system and, at the same time, provide for contributions intended to cover the costs for private schools. This statement, it is submitted, clearly contradicts the declaration made in January 1988 by the Swedish Minister of Education on behalf of the Government:

> "In my opinion it is reasonable that a local government pays contributions to private schools for pupils registered as resident in the municipality, contributions that shall in principle amount to the equivalent of economies effected as the municipality does not pay e.g. for school meals and textbooks." (Proposition 1987/88:100)

9.5 Finally, the authors maintain that the description of the public school sector contained in the State party's submission is intended to convey the impression that a private school system is unnecessary in Sweden. They therefore object to the State party's assertion that "... the public sector school system is intended to serve the needs of the entire population and does not make it necessary to build up parallel school systems ...", and submit the this is largely contradicted by the fact that parents of more than 5,000 pupils have nevertheless found it necessary, in 1989, to choose private schools. In this context, they add that many more parents would be willing to send their children to such schools, if they could afford them and if the authorities would not withhold the assistance in question.

10.1 The Human Rights Committee has considered the merits of the communications in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

10.2 The main issue before the Committee is whether the authors of the communications are victims of a violation of article 26 of the Covenant because, as parents of children attending a private school, they have been denied subsidies from the municipality of Norrköping for the textbooks of their children attending the Rudolf Steiner School in Norrköping and from the municipality of Upplands-Bro for the textbooks and school meals of their children attending the Ellen Key School in Stockholm, whereas parents of children who attend public schools and parents whose children attend private schools in other municipalities do enjoy financial assistance for their children's textbooks and meals. In deciding whether or not the State party has violated article 26 by not granting the authors such benefits, the Committee bases its findings on the following observations.

10.3 The State party's educational system provides for comprehensive public sector schooling and allows for private education as an alternative to public education. In this connection the Committee observes that the State party and its municipalities make public sector schooling and a variety of ancillary benefits, such as free transport by bus, free textbooks and school meals, available to all children subject to compulsory school education. The State party cannot be deemed to be under an obligation to provide the same benefits to private schools; indeed, the preferential treatment given to public sector schooling is reasonable and based on objective criteria. The parents of Swedish children are free to take advantage of the public sector schooling or to choose private schooling for their children. The decision of the authors of these communications to choose private education was not imposed on them by the State party or by the municipalities concerned, but reflected a free choice recognized and respected by the State party and the municipalities. Such free decision, however, entails certain consequences, notably payment of tuition, transport, textbooks and school meals. The Committee notes that a State party cannot be deemed to discriminate against parents who freely choose not to avail themselves of benefits which are generally open to all. The State party has not violated article 26 by failing to provide the same benefits to parents of children attending private schools as it provides to parents of children at public schools.

10.4 The authors also allege discrimination by the State party because different private schools receive different benefits from the municipalities. The Committee notes that the authors complain about decisions taken not by the authorities of the Government of Sweden but rather by local authorities. The State party has referred to the decentralized system existing in Sweden, whereby decisions of this nature are taken at the local level. In this connection the Committee recalls its prior jurisprudence that the State party's responsibility is engaged by virtue of decisions of its municipalities and that no State party is relieved of its obligations under the Covenant by delegating some of its functions to autonomous organs or municipalities. [a]/ The State party has informed the Committee that the various municipalities decide upon the appropriateness of private schools in their particular education system. This determines whether a subsidy will be awarded. This is how the Swedish school system is conceived pursuant to the School Act of 1985. When a municipality makes such a decision, it should be based on reasonable and objective criteria and made for a purpose that is legitimate under the Covenant. In the cases under consideration, the Committee cannot conclude, on the basis of the information before it, that the denial of a subsidy for textbooks and school meals of students attending the Ellen Key School in Stockholm and the Rudolf Steiner School in Norrköping was incompatible with article 26 of the Covenant.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts which have been placed before it do not disclose a violation of any provision of the Covenant.

[Done in English, French, Spanish and Russian, the English text being the original version.]

Notes

a/ Communication No. 273/1988 (B.d.B. et al. v. The Netherlands) declared inadmissible on 30 March 1989, para. 6.5.

F. Communication No. 327/1988, Hervé Barzhig v. France (views adopted on 11 April 1991, forty-first session)

Submitted by:	Hervé Barzhig
Alleged victim:	The author
State party concerned:	France
Date of communication:	9 September 1988 (date of initial letter)
Date of the decision on admissibility:	28 July 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 11 April 1991,

Having concluded its consideration of communication No. 327/1988, submitted to the Committee by Hervé Barzhig under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (initial submission of 9 September 1988 and subsequent correspondence) is Hervé Barzhig, a French citizen born in 1961 and a resident of Rennes, Bretagne, France. He claims to be the victim of a violation by France of articles 2, 14, 19, 26 and 27 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 On 7 January 1988, the author appeared before the Tribunal Correctionnel of Rennes on charges of having defaced 21 road signs on 7 August 1987. He requested permission of the court to express himself in Breton, which he states is his mother tongue, and asked for an interpreter. The court rejected the request and referred consideration of the merits to a later date.

2.2 The author appealed the decision not to make an interpreter available to him. By decision of 20 January 1988, the President of the Criminal Appeals Chamber of the Tribunal Correctionnel of Rennes dismissed his appeal. On 3 March 1988, the case was considered on its merits; the author was heard in French. He was given a suspended sentence of four months' imprisonment and fined 5,000 French francs. The Department of Criminal Prosecutions appealed the decision.

2.3 On 4 July 1988, the Court of Appeal of Rennes confirmed the judgement of the court of first instance. On appeal, the author was heard in French.

Complaint

3.1 The author submits that the State party's refusal to respect the rights of Bretons to express themselves in their mother tongue constitutes a violation of article 2 of the Covenant as well as language-based discrimination within the meaning of article 26, because French-mother-tongue citizens enjoy the right to express themselves in their language, whereas Bretons are denied this right simply because they are deemed to be proficient in French. This, in the author's opinion, reflects a long-standing policy, on the State party's part, of suppressing or eliminating the regional languages spoken in France.

3.2 With reference to the French declaration entered in respect of article 27, the author contends that the State party's refusal to recognize the linguistic entity of the Breton minority and to apply article 27 of the Covenant violates the Universal Declaration of Human Rights. In this context, he invokes a resolution adopted by the European Parliament on 30 October 1987, addressing the need to protect European regional and minority languages and cultures.

3.3 Although the author does not specifically invoke article 14 of the Covenant, it is clear from his submissions that he considers the refusal of the services of an interpreter to be a violation of article 14, paragraph 3 (f), of the Covenant. He affirms that as a matter of principle, French courts refuse to provide the services of interpreters to accused persons of Breton mother tongue on the ground that they are deemed to be proficient in French.

3.4 As to the requirement of exhaustion of domestic remedies, the author submits that there are no effective remedies available after the decision of the Court of Appeal of Rennes of 4 July 1988, as the French judicial system refuses to recognize the use of the Breton language.

State party's observations

4.1 As to admissibility, the State party contends that the communication is inadmissible on the grounds of non-exhaustion of domestic remedies, since the author did not lodge an appeal to the Court of Appeal of Rennes against the decision of the President of the Criminal Appeals Chamber of the Tribunal Correctionnel of 20 January 1988 not to allow him to express himself in Breton.

4.2 Concerning the author's allegations under article 14, the State party argues that the notion of a "fair trial" (*procès équitable*) in article 14, paragraph 1, cannot be determined *in abstracto* but must be examined in the light of the circumstances of each case. As to the judicial proceedings in Mr. Barzhig's case, the State party submits that the author and the witnesses he called on his behalf were perfectly capable of expressing themselves in French.

4.3 The State party submits that criminal proceedings are an inappropriate venue for expressing demands linked to the promotion of the use of regional languages. The sole purpose of criminal proceedings is to establish the guilt or the innocence of the accused. In this respect, it is important to facilitate a direct dialogue between the judge and the accused. As the intervention of an interpreter encompasses the risk of the accused's statements being reproduced inexactly, resort to an interpreter should be reserved for strictly necessary cases, i.e., if the accused does not sufficiently understand or speak the court language.

4.4 In the light of these considerations, the President of the Criminal Appeals Chamber of the Tribunal Correctionnel of Rennes was justified in not applying section 407 of the French Code of Penal Procedure, as requested by the author. Pursuant to this provision, the President of the Court may, *ex officio*, order the services of an interpreter. In the application of article 407, the judge exercises a considerable margin of discretion, based on a detailed analysis of the individual case and all the relevant documents. This has been confirmed by the Criminal Chamber of the Court of Cassation on several occasions. [a]

4.5 The State party recapitulates that the author and the witnesses called on his behalf were francophone, a fact confirmed by the author himself in a submission to the Human Rights Committee dated 21 January 1989. Accordingly, the State party submits, there can be no question of a violation of article 14, paragraph 3 (f).

4.6 In the State party's opinion, the author interprets the notion of "freedom of expression" in article 19, paragraph 2, in an excessively broad and abusive manner; it adds that Mr. Barzhig's freedom of expression was in no way restricted during the proceedings against him, and that he could always present the defence arguments in French.

4.7 In respect of the alleged violation of article 26, the State party recalls that the prohibition of discrimination is enshrined in article 2 of the French Constitution. More particularly, article 407 of the Code of Penal Procedure, far from operating as language-based discrimination within the meaning of article 26, ensures the equality of treatment of the accused and of witnesses before the criminal jurisdictions, since all are required to express themselves in French. In addition, the State party charges that the principle of *venire contra factum proprium* is appliable to the author's behaviour: he did not want to express himself in French before the courts under the pretext that he had not mastered the language sufficiently, whereas his submissions to the Committee were made in "irreproachable" French.

4.8 As to the alleged violation of article 27 of the Covenant, the State party recalls that upon accession to the Covenant, the French Government entered the following reservation: "In the light of article 2 of the Constitution of the French Republic, the French Government declares that article 27 is not applicable so far as the Republic is concerned." In the State party's opinion, the idea of ethnic, religious or linguistic minority invoked by the author is irrelevant to his case, and is not opposable to the Government, which does not recognize the existence of "minorities" in the Republic, defined, in article 2 of the Constitution, as "indivisible, secular, democratic and social (indivisible, laïque, démocratique et sociale ...)".

Issues and proceedings before the Committee

5.1 The Committee noted the State party's contention that the communication was inadmissible because the author had failed to appeal against the decision of the judge of the Tribunal Correctionnel of Rennes not to let him express himself in Breton. It observed that the author sought, in effect, the recognition of Breton as a vehicle of expression in court, and recalled that domestic remedies need not be exhausted if they objectively had no prospect of success: this is the case where, under applicable domestic laws, the claim would inevitably be dismissed, or where established jurisprudence of the highest domestic tribunals precluded a positive result. Taking into account relevant French legislation as well as article 2 of the French Constitution, the Committee concluded that there were no effective remedies that the author might have pursued: de lege lata, the objective pursued by him could not be achieved by resorting to domestic remedies.

5.2 In respect of the authors' claim of a violation of article 27 of the Covenant, the Committee noted the French "declaration" but did not address its scope, finding that the facts of the communications did not raise issues under this provision. [b/] Nor did the Committee consider that the communication raised issues under article 19 of the Covenant.

5.3 On 28 July 1989, therefore, the Human Rights Committee declared the communication admissible in so far as it appeared to raise issues under articles 14 and 26 of the Covenant.

5.4 The Human Rights Committee has considered the communication in the light of all the material placed before it by the parties. It bases its views on the following considerations.

5.5 The Committee has noted the author's claim that the denial of an interpreter for himself and for a witness willing to testify on his behalf constituted a violation of article 14 of the Covenant. The Committee observes, as it has done on previous occasions, [c/] that article 14 is concerned with procedural equality; it enshrines, inter alia, the principle of equality of arms in criminal proceedings. The provision for the use of one official court language by State parties to the Covenant does not violate article 14 of the Covenant. Nor does the requirement of a fair hearing obligate States parties to make available to a person whose mother tongue differs from the official court language, the services of an interpreter, if that person is capable of understanding and expressing himself or herself adequately in the official language. Only if the accused or the witnesses have difficulties in understanding, or in expressing themselves in the court language, is it obligatory that the services of an interpreter be made available.

5.6 On the basis of the information before it, the Committee considers that the French courts complied with their obligations under article 14. The author has failed to show that he and the witness called on his behalf were unable to understand and to express themselves adequately in French before the Tribunal. In this context, the Committee notes that the notion of a fair trial in article 14, paragraph 1, juncto paragraph 3 (f), does not imply that the accused be afforded the opportunity to express himself or herself in the language that he or she normally speaks or speaks with a maximum of ease. If the court is certain, as it follows from the decision of the Tribunal Correctionnel of Rennes, that the accused is sufficiently proficient in the court language, it need not take into account whether it would be preferable for the accused to express himself in a language other than the court language.

5.7 French law does not, as such, give everyone a right to speak his or her own language in court. Those unable to understand or speak French are provided with the services of an interpreter, pursuant to article 407 of the Code of Penal Procedure. This service would have been available to the author, had the facts required it; as the facts did not, he suffered no discrimination under article 26 on account of his language.

6. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as submitted do not disclose a violation of any of the provisions of the Covenant.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See, for example, the judgement of the Criminal Chamber of the Court of Cassation of 30 June 1981 in the Fayomi case.

b/ Following the decision on admissibility in this case, the Committee decided at its thirty-seventh session that France's declaration concerning article 27 had to be interpreted as a reservation (T.K. v. France, No. 220/1987, paras. 8.5 and 8.6; H.K. v. France, No. 222/1987, paras. 7.5 and 7.6; cf. also separate opinion by one Committee member).

c/ See communication No. 273/1988 (B.d.B. v. The Netherlands), inadmissibility decision of 30 March 1989, para. 6.4

ANNEX XII*

Decisions of the Human Rights Committee declaring communications inadmissible under the Optional Protocol to the International Covenant on Civil and Political Rights

A. Communication No. 234/1987, D.S. v. Jamaica (Decision of 8 April 1991, adopted at the forty-first session)

Submitted by: D.S. (name deleted)

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 3 May 1987 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 8 April 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 3 May 1987 and subsequent correspondence) is D.S., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation of his human rights by the Government of Jamaica. Although he does not specifically invoke the International Covenant on Civil and Political Rights, it is apparent from the context of his submissions that his claims relate to article 14, paragraphs 1 and 3 (d), of the Covenant.

Facts as submitted by the author

2.1 The author was arrested on 4 June 1985 and charged with the murder, on 31 May 1985, of L.E., in the district of Bell Plain, Clarendon. He was tried in the Clarendon Circuit Court, found guilty as charged and sentenced to death on 3 October 1985. The Court of Appeal of Jamaica dismissed his appeal on 2 July 1986. The author indicates that he intended to petition the Judicial Committee of the Privy Council for special leave to appeal, but that he is unable to retain a representative privately.

2.2 The evidence relied on by the prosecution during the trial was that, on the evening of 31 May 1985, a group of young men, including the author and L.E., went to a "mango feast" (described as the stoning of mango trees in order to collect the ripe fruits falling from the trees). At around 8 p.m., the group broke up, and three of the men walked to a nearby store to buy tobacco; D.S. continued to walk down a road by himself, followed, at a short distance, by the other men. L.E. approached the author, who began to insult him and suddenly cast the fatal stone. Medical evidence showed that L.E. suffered a depressed skull fracture, which left brain tissue protruding from the wound. According to two prosecution witnesses, D.S. then remarked "ah so me do it", identifying his victim as a man who had stabbed him in the forehead three weeks earlier. These two witnesses, as well as a third one, further testified that the author threatened to kill them if they were to report the incident to the police.

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* Made public by a decision of the Human Rights Committee.

2.3 The author's version of the incident was that, on the evening in question, he and a few other people walked along the road after a "mango feast". When they reached another group of mango trees, all of them began to throw stones into the trees, in an attempt to bring down the fruit. When he went to retrieve the mangoes, he heard groans and saw a body lying under a tree. The author stated that he did not know which stone had hit L.E., emphasizing that the hit was accidental.

2.4 As to his prior relations with the deceased, the author stated that L.E. had stabbed him in the forehead about three weeks earlier, in the mistaken belief that the author had called him by the nickname of "Duppy Batty" and was engaged in an affair with his wife. After realizing his mistake, L.E. visited the author to apologize for his attack, handing over to him some money to cover medical expenses and promising more later.

2.5 With regard to the circumstances of the trial and appeal, the author acknowledges that he was represented by a legal aid attorney throughout the trial. On 4 July 1986, he was informed that his appeal had been heard and dismissed. The principal ground of appeal had been that the verdict of the jury was "unsafe and/or unreasonable having regard to the circumstances", and that the proper verdict should have been "guilty of manslaughter". His representative for the appeal, however, informed him that this ground could not be argued since the trial judge had clearly put the issue of manslaughter to the jury, which had returned a verdict of "guilty of murder". On 14 July 1986, the same lawyer filed a petition for mercy with the office of the Governor-General; no follow-up was given to it.

Complaint

3.1 The author contends that the conduct of his trial was beset by several irregularities. Thus, the prosecution witnesses allegedly committed perjury, falsely accusing him of having cast the fatal stone deliberately. He further affirms that although he was represented by a legal aid attorney, the assistance of his lawyer left much to be desired. It is not specified, however, in what respect the assistance was inadequate; the author concedes that all the prosecution witnesses were cross-examined. He finally claims that the only witnesses sought to testify on his behalf were his sister and his mother, whose testimony related to the prior relations between himself and L.E.

3.2 As to the subsequent stages of the judicial proceedings, the author claims, without further clarifying his allegation, that because the lawyers who represented him did not receive their fees, they are unwilling to inform him about the current status of his case. He further contends that he has unsuccessfully sought legal aid for purposes of a petition for special leave to appeal to the Judicial Committee of the Privy Council.

State party's observations

4.1 The State party submits that the communication is inadmissible on the ground of non-exhaustion of domestic remedies because the author retains the right, under section 110 of the Jamaican Constitution, to petition the Judicial Committee of the Privy Council for special leave to appeal, and that legal aid would be available for this purpose pursuant to section 3 of the Poor Prisoners' Defence Act.

4.2 The State party explains that the principal criterion for granting legal aid is the inability of the convicted individual to retain counsel on his own. The formalities are laid down in section 3, paragraph 1, which stipulates that:

> "Where it appears to a certifying authority, that is, a resident magistrate or judge of the Supreme Court, that the means of a person charged with or ... convicted of a criminal offence are insufficient to enable that person to obtain legal aid, the certifying authority shall grant in respect of that person a legal aid certificate, which shall entitle him to free legal aid in the preparation and conduct of his defence in the appropriate proceedings ..., and to have counsel or solicitor assigned to him for that purpose in the prescribed manner."

4.3 As to the author's case, the State party indicates that all the available records reveal that D.S. was represented in the Court of Appeal by two legal aid attorneys, to whom legal aid certificates had been issued. Furthermore, the records do not disclose that D.S. made any attempt to apply for legal aid for purposes of a petition for leave to appeal to the Judicial Committee of the Privy Council, or that a petition was submitted to this body.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 With respect to the author's claims of unfair trial, the Committee observes that it is generally for the appellate courts of States parties to the Covenant and not for the Committee to evaluate the facts and evidence placed before domestic courts and to review the interpretation of domestic law by national courts. Similarly, it is for the appellate courts and not for the Committee to review specific instructions to the jury by the judge, unless it is apparent from the author's submission that the instructions to the jury were clearly arbitrary or tantamount to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The author's allegations do not show that the judge's instructions or conduct of the trial suffered from such defects in the present case. In particular, it transpires that the issue of manslaughter, legitimate self-defence or murder was clearly put to the jury by the trial judge. In this respect, therefore, the author's claims as submitted do not come within the competence of the Committee and, in that sense, fall outside the scope of protection provided by article 14, paragraph 1, of the Covenant. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

5.3 With respect to the requirement of exhaustion of domestic remedies, the Committee takes note of the State party's contention that the communication is inadmissible because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal. It has further noted the author's claim that he has not been able to secure legal aid for this purpose. No additional clarifications have, however, been received from the author in this context, in spite of several reminders, and the State party has indicated that its records do not reveal that any formal request for legal aid was filed. On the basis of the information provided by the parties, the Committee must conclude that the author failed to pursue remedies available to him under Jamaican law, and that the requirements of article 5, paragraph 2 (b), of the Optional Protocol, have not been met.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol inasmuch as it relates to the author's claim under article 14, paragraph 1, of the Covenant, and inadmissible under article 5, paragraph 2 (b), inasmuch as it relates to the author's claim under article 14, paragraph 3 (d), of the Covenant;

(b) That this decision be transmitted to the State party and to the author.

[Done in English, French, Russian and Spanish, the English text being the original version.]

B. Communication No. 254/1987, W.W. v. Jamaica (Decision of 26 October 1990, adopted at the fortieth session)

Submitted by:	W.W. (name deleted)
Alleged victim:	The author
State party concerned:	Jamaica
Date of communication:	21 September 1987 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 October 1990,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 21 September 1987 and subsequent submissions) is W.W., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims that his rights under the International Covenant on Civil and Political Rights were violated by Jamaica in that the trial and the pre-trial proceedings leading to his conviction were neither fair nor impartial.

2.1 The author states that he was charged with murder, tried, convicted and sentenced to death by the Home Circuit Court in Kingston on 29 January 1987 and that his appeal was dismissed on 22 July 1987. He claims that the identification parade at which he was identified was unfair and suggestive.

3. By decision of 21 September 1987, the Human Rights Committee transmitted the communication to the State party and requested it, under rule 86 of the rules of procedure, not to carry out the death sentence against the author while his communication was under consideration by the Committee. The author was requested to substantiate his allegation that the identification parade was improperly conducted, to explain what he considered to have been unfair in the conduct of his trial and to indicate whether he had sought legal aid for purposes of a petition for special leave to appeal to the Judicial Committee of the Privy Council.

4. In his reply, dated 4 January 1988, the author claims that the judge interfered with his presentation of the evidence by repeatedly admonishing him to keep it short. He also claims that his rights were inadequately summed up by the trial judge for the jury. He further claims that he was not afforded adequate time to consult with his counsel prior to both trial and appeal. He claims that he was not informed of the name of his court-appointed representative for the appeal until two days before the hearing of the appeal. Finally, he states that he is in the process of seeking counsel to petition the Judicial Committee of the Privy Council for special leave to appeal. In the light of these circumstances, he claims that his rights under article 14, paragraphs 3 (b) and 3 (d), of the Covenant have been violated.

5. By decision of 22 March 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party and requested it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of admissibility. The State party was further requested, under rule 86 of the rules of procedure, not to carry out the death sentence against the author while his communication was under consideration.

6. In its submission under rule 91, dated 16 November 1988, the State party argues that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, on the ground of non-exhaustion of domestic remedies, because the author has failed to petition the Judicial Committee of the Privy Council for special leave to appeal. The State party further claims that legal aid would be available to W.W. pursuant to Section 3 of the Poor Prisoners' Defence Act.

7. In his comments, dated 14 December 1988, the author indicated that his initial submission to the Committee was made in the absence of any knowledge about the availability of legal aid for purposes of petitioning the Judicial Committee of the Privy Council for special leave to appeal and requested the Committee to postpone consideration of his communication, pending the outcome of the petition. Subsequently, the author has obtained pro bono representation from a London law firm for purposes of petitioning the Judicial Committee of the Privy Council. His representatives have indicated that they are filing a petition and that the hearing is expected before the end of 1990. Under cover of a note dated 10 October 1990, counsel forwards a copy of a legal opinion, formulated by leading counsel in the case; according to this opinion, there is merit in a petition for special leave to appeal.

8.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the matter has not been submitted to another instance of international investigation or settlement.

8.3 With regard to the requirement of exhaustion of domestic remedies, the Committee has taken note of the State party's contention that the communication is inadmissible because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal. It observes that the author has secured pro bono legal representation from a London law firm for this purpose, after submitting his case to the Human Rights Committee, and that his representatives are seeking to petition the Privy Council for special leave to appeal on his behalf. While expressing concern about the apparent unavailability, so far, of relevant court documents in the case, the Committee does not consider that a petition for special leave to appeal to the Judicial Committee of the Privy Council would be a priori ineffective and as such a remedy that authors need not exhaust before addressing a communication to the Committee. It therefore finds that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

8.4 With regard to the practical operation of the system of legal aid in Jamaica, the Committee stresses that article 14, paragraph 3 (d), of the Covenant requires States parties to ensure proper legal assistance to persons accused of criminal offences at all stages of their trial and appeal, including appeals to the Judicial Committee of the Privy Council. In the light of article 6, paragraph 2, of the Covenant it is imperative that whenever legal aid is provided, it must be sufficient to ensure that the trial can be conducted fairly.

9. The Human Rights Committee therefore decides:

(a) The communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) To request the State party to make all the relevant court documents available to the author and his counsel without further delay, so as to permit an effective recourse to the Judicial Committee of the Privy Council;

(c) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party shall be requested, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author before he has had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

(d) That this decision shall be transmitted to the State party, to the author and to his counsel.

C. Communication No. 302/1988, A.H. v. Trinidad and Tobago (Decision of 31 October 1990, adopted at the fortieth session)

Submitted by:	A.H. (name deleted)
Alleged victim:	The author
State party concerned:	Trinidad and Tobago
Date of communication:	27 September 1987 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 31 October 1990,

Adopts the following:

Decision on admissibility*

1. The author of the communication (initial letter dated 27 September 1987 and subsequent correspondence) is A. H., a Guyanese citizen currently awaiting execution at the State Prison in Port-of-Spain, Trinidad. He claims to be a victim of a violation of his rights under the International Covenant on Civil and Political Rights by the Government of Trinidad and Tobago. He is represented by counsel.

2.1 The author states that on 8 July 1983, he was convicted and sentenced to death for the murder of an English seaman. He claims that, during the trial, the Prosecutor failed to produce upon request a document prepared in the course of the preliminary inquiry describing the persons participating in the identification parade in the course of which the author was identified. The Prosecutor stated that the document, with the code "I. M. 2", had been lost. The author alleges that this is in contravention of guidelines requiring records of identifications of suspects by witnesses to be kept by the police, including statements by witnesses describing what they have seen. Failing this, the author alleges, the court must provide the defence with the names and addresses of all such witnesses. The author claims that such records were deliberately removed from the Registry of the High Court in order to obtain a conviction.

2.2 The author claims that the Court of Appeal acknowledged that "unspecified irregularities" took place during the trial but rejected his request for relief. On 19 February 1987, the author's petition to the Judicial Committee of the Privy Council was dismissed.

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* An individual opinion by Committee member Mr. Bertil Wennergren is reproduced in an Appendix to this document.

2.3 After the dismissal of his petition for special leave to appeal, the author applied to the Pardons Committee for the commutation of his sentence. He also sought to file a constitutional motion and complain that his initial request to the Legal Aid Board for the granting of legal assistance for this purpose was either ignored or denied. On an unspecified subsequent date, however, he obtained legal assistance from a local humanitarian organization. He notes that the hearing of his constitutional motion, initially scheduled for February 1989, has been postponed on numerous occasions. This situation appears to be partly attributable to the decision of his representative not to seek a new hearing date until after the Commission of Inquiry into the Use of the Death Penalty has issued its report. Allegedly, his representative has also been informed by the judicial authorities that no financial assistance is provided for constitutional motions. As a result, he claims, the representative has become reluctant to diligently pursue the constitutional motion.

2.4 Concerning the conditions of his detention on death row, the author claims that he is forced to pay for many necessities of daily life in the prison, including food and postage. He further alleges that the prison officials are withholding from him medical records pertaining to head injuries allegedly inflicted on him by a prison officer. No specific information about ill-treatment on death row is, however, provided.

3. By its decision of 8 July 1988, the Working Group of the Human Rights Committee decided to transmit the communication to the State party and to request it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. It further requested the State party, under rule 86, not to carry out the death sentence agaist the author while his communication was under consideration by the Committee.

4. In its submission under rule 91 of the rules of procedure, dated 14 November 1988, the State party contends that the communication is inadmissible on grounds of non-exhaustion of domestic remedies, as required under article 5, paragraph 2 (b), of the Optional Protocol. The State party refers in particular to a constitutional motion filed on the author's behalf, which was set for hearing in February 1989. The State party further asserts that even after the completion of court proceedings, no prisoner is executed in Trinidad and Tobago without further review by the Advisory Committee on the Power of Pardon, its advice thereon to the Minister of Justice and the latter's advice to the President of the Republic.

5. In his comments, dated 9 February 1989, counsel notes that the transcript of the judgment of the Court of Appeal "reveals that the Court of Appeal did not recognise that there were irregularities during the trial. It was strongly contended on appeal that the identification parade was irregularly conducted". He further states that witnesses for the prosecution were cross-examined and that the author and his legal representative for the trial opted for the accused to make an unsworn statement from the dock, although the author was given the opportunity of giving evidence under oath and calling witnesses. Counsel adds that the author was represented before the Judicial Committee of the Privy Council by a legal aid attorney.

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has considered the material placed before it by the author in respect of alleged irregularities in the judicial proceedings in his case, which are said to constitute a violation of article 14 of the Covenant. A careful examination of the author's submissions does not show how the disappearance of the document, referred to as "I.M.2", could have influenced the court proceedings to such an extent as to raise prima facie issues under article 14. Moreover, the author has not sufficiently substantiated his claim that the proceedings suffered from other procedural defects. In this respect, therefore, he has failed to advance a claim under the Covenant within the meaning of article 2 of the Optional Protocol.

6.3 With respect to issues that could arise under article 10 of the Covenant, the Committee notes that the author has not indicated what steps, if any, he has taken to denounce his alleged ill-treatment to the competent prison authorities, and what investigations, if any, have been carried out. Accordingly, the Committee finds that in this respect, the author has failed to exhaust domestic remedies.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol in respect of the author's claims under article 14 of the Covenant, and inadmissible under article 5, paragraph 2 (b), of the Optional Protocol in respect of his claim under article 10 of the Covenant;

(b) That the Committee's decision may be reviewed under rule 92, paragraph 2, of its rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility in respect of his claim under article 10 of the Covenant no longer apply;

(c) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure, the State party shall be requested, under rule 86 of the Committe's rules of procedure, not to carry out the death sentence against the author before he has had reasonable time to complete the effective domestic remedies available to him and to request the Committee to review the present decision;

(d) That this decision shall be transmitted to the State party, to the author and to his counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

APPENDIX

Individual opinion submitted by Mr. Bertil Wennergren pursuant to rule 92, paragraph 3, of the Committee's rules of procedure concerning the Committee's decision to declare communication No. 302/1988, A.H. v. Trinadad and Tobago, inadmissible

On 25 May 1989, the author submitted comments on the State party's submission under rule 91 of the rules of procedure, dated 14 November 1988. After having expressed his concerns about not having been granted legal aid for purposes of a constitutional motion, he stated the following: "And the prison authorities do not want to give me a copy of the medical certificate for an incident that took place on May 2, 1988; a prison officer by the name of C. burst my head at about 5.30 PM o'clock that Monday afternoon, and I get 4 stitches." A copy of that submission was sent to the State party on 14 June 1989 "for information and in order to complete the files of the State party". As the author's allegations may raise an issue under article 19, paragraph 2, of the Covenant regarding his right to freedom to seek and receive information, the State party should, in my opinion, be requested under rule 91 of the rules of procedure, to submit additional written information or observations relevant to the question of admissibility of the author's new allegation. The Committee's decision to declare the communication inadmissible under article 5, paragraph 2 (b), of the Protocol, may, however, be reviewed at a later date by the Committee upon a written request, by the author containing information to the effect that the reasons for inadmissibility referred to in article 5, paragraph 2 (b), no longer apply, i.e. that available domestic remedies have been exhausted.

Bertil WENNERGREN

D. Communication No. 303/1988, E.B. v. Jamaica (Decision of 26 October 1990, adopted at the fortieth session)

Submitted by: E.B. (name deleted)

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 25 May 1988 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant of Civil and Political Rights,

Meeting on 26 October 1990,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 25 May 1988 and subsequent submissions) is E.B., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be innocent of the murder for which he was convicted and sentenced to death, and to be a victim of a violation of his human rights by Jamaica.

2.1 The author states that he was arrested in 1979 and charged with the murder of a police inspector. He claims that his arrest was the result of false information given to the police by his estranged girlfriend and her sister, who allegedly told the police of the quarrels between them and falsely added that he possessed a gun. The police allegedly made the girlfriend sign a statement without her reading it. Both women have since retracted this information in sworn statements to the Jamaica Council on Human Rights. They claim that they attempted to correct their story to the police and to testify in court, but that they were intimidated by the police, who threatened to arrest and prosecute them for perjury should they retract their initial testimony.

2.2 The author claims that the police used five "bogus" witnesses in the identification parade, three of whom, including a police officer and a home guard, purported to identify him. A Jamaican citizen assisting the author on a private basis claims to have spoken to several people who confirm that none of these individuals was in the area on the day of the crime. The author further points out that he was unrepresented during the parade, and that no court official attended it, which he claims to be in violation of the Jamaican Constitution.

2.3 The author claims that his court-appointed counsel refused to call witnesses on his behalf, although he had requested him to do so. He adds that the attorney failed to represent him properly, allegedly because of their membership in rival political parties.

2.4 The author further observes that several individuals, including the owner of a shop close to where the murder occurred, L.N., attest that he had not been present at the scene of the crime. L.N. claims to have seen two men struggling with the victim, to have heard the fatal shots and to have recovered the murder weapon. He gave evidence to the police during the preliminary inquiry but did not participate in the identification parade nor was he called as a witness at trial. The murder weapon allegedly was not tendered as evidence in court. L.N. made a sworn statement, dated 24 February 1987, to this effect to the Jamaican Council on Human Rights; he has since died.

2.5 The author states that he has secured the pro bono assistance of a London law firm for purposes of a petition for special leave to appeal to the Judicial Committee of the Privy Council. He states that the Jamaican courts, however, have only provided his representatives with the notes of evidence and the copy of an oral judgement dismissing his appeal. He fears that in the absence of a reasoned judgement from the Court of Appeal, his petition for special leave to appeal would inevitably be dismissed. On 29 August 1990, author's counsel confirmed that he had not obtained the written judgement of the Court of Appeal, adding, however, that leading counsel has already prepared a draft petition for special leave to appeal, and that he endeavours to place the case before the Judicial Committee.

3. By decision of 8 July 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party and requested it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication and to provide the Committee with the texts of the written judgements in the case. The Working Group further requested the State party, pursuant to rule 86 of the rules of procedure, not to carry out the death sentence against the author while his communication was under consideration by the Committee.

4. In its submission under rule 91, dated 8 December 1988, the State party contends that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, on the ground of non-exhaustion of domestic remedies, because the author may still petition the Judicial Committee of the Privy Council for special leave to appeal, pursuant to Section 110 of the Jamaican Constitution. The State party has not forwarded to the author or the Committee copies of the judgements in the case.

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the matter has not been submitted to another instance of international investigation or settlement.

5.3 With regard to the requirement of exhaustion of domestic remedies, the Committee has taken note of the State party's contention that the communication is inadmissible because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal. It observes that the author has secured *pro bono* legal representation from a London law firm for this purpose, after submitting his case to the Human Rights Committee, and that his representatives are endeavouring to file a petition for special leave to appeal on his behalf. While expressing concern about the apparent unavailability, so far, of a reasoned judgement from the Court of Appeal in the case, the Committee does not consider that a petition for special leave to appeal to the Judicial Committee of the Privy Council would be *a priori* ineffective and as such a remedy that authors need not exhaust before addressing a communication to the Committee. It therefore finds that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

5.4 With regard to the practical operation of the system of legal aid in Jamaica, the Committee stresses that article 14, paragraph 3 (d), of the Covenant requires States parties to ensure proper legal assistance to persons accused of criminal offences at all stages of their trial and appeal, including appeals to the Judicial Committee of the Privy Council. In the light of article 6, paragraph 2, of the Covenant, it is imperative that whenever legal aid is provided, it must be sufficient to ensure that the trial can be conducted fairly.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That the State party shall be requested to make all the relevant court documents available to the author and to his counsel without further delay, so as to permit an effective recourse to the Judicial Committee of the Privy Council;

(c) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party shall be requested, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author before he has had reasonable time to complete the effective domestic remedies available to him and to request the Committee to review the present decision;

(d) That this decision shall be transmitted to the State party, to the author and to his counsel.

[Done in English, French, Spanish and Russian, the English text being the original version.]

E. Communication No. 304/1988, D.S. v. Jamaica (Decision of 11 April 1991, adopted at the forty-first session)

Submitted by: D.S. (name deleted)

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 15 June 1988 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant of Civil and Political Rights,

Meeting on 11 April 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 15 June 1988 and subsequent submissions) is D.S., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation of his human rights by Jamaica.

Facts as submitted by the author

2.1 The author was arrested on 19 July 1985. In police custody, he was informed by an arresting officer that he and his common-law wife were charged with the murder, on 16 July 1985, of his father. He claims to be innocent of the charge. While his wife was subsequently granted bail, the author remained in custody until the beginning of the trial on 13 October 1986 in the Home Circuit Court, Kingston. During the trial he was represented by a legal aid attorney. On 16 October 1986, D.S. was found guilty as charged and sentenced to death; his wife was sentenced to life imprisonment. On 22 July 1987, the Court of Appeal dismissed the author's appeal. A subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 20 February 1991.

2.2 The author alleges that his eight-year-old son, Andrew, was forced to give false evidence against his parents. He contends that his son was not at home on 16 July 1985 but was about three-and-a-half miles away from the place where the crime occurred. This was apparently corroborated by the author's 11-year-old daughter, Ann Marie, who testified that, on the day in question, her brother had left home. She apparently had gone to her grandfather's home, which was within earshot of the premises occupied by the author and his wife. The author purportedly heard her shout that her grandfather was lying on the floor of the house. [a]

Complaint

3.1 The author claims that he did not receive a fair trial. He affirms that on several occasions between 5 and 19 July 1985 he had to undergo medical treatment in hospital for an unspecified injury, and that the testimony of his son Andrew, the prosecution's principal witness, was "fabricated" by the police officer who had investigated the crime.

3.2 The author alleges general prejudice and bias of the trial court. In particular, he claims that the judge misdirected the jury by failing to point out, inter alia, that: (a) the prosecution had failed to prove the blood group of the deceased; (b) there was no evidence of bloodstains on the author's clothes; and (c) there were inconsistencies in Andrew's testimony, in particular with respect to the exact place of the crime, the window from which he claimed to have witnessed the murder, the crime weapon and the clothes and bandage the author was wearing at the time. In this context, the author adds that no fingerprints were ever taken from him, to match those on the crime weapon. He further claims that there was evidence that Andrew was on bad terms with his parents, and that the trial judge failed to put this to the jury. It is submitted that in the circumstances and especially bearing in mind Andrew's age, it was incumbent on the trial judge to direct the jury with particular care on Andrew's evidence; it is conceded, however, that the judge did point out to the jury that caution was required in accepting this evidence, unless sufficiently corroborated.

3.3 The author further submits that no witnesses were sought to testify on his behalf, and that his legal aid attorney did not make any effort to contact witnesses who might have corroborated his own version.

State party's observations

4. In its submission, made on 17 November 1988, the State party argued that the communication was inadmissible on the ground of non-exhaustion of domestic remedies, since Jamaica's highest judicial instance, the Judicial Committee of the Privy Council, had not yet entertained an appeal in the case.

Issues before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 With respect to the author's claims of unfair trial, the Committee observes that it is generally for the appellate courts of States parties to the Covenant and not for the Committee to evaluate the facts and evidence placed before domestic courts and to review the interpretation of domestic law by national courts. Similarly, it is for the appellate courts and not for the Committee to review specific instructions to the jury by the judge, unless it is apparent from the author's submission that the instructions to the jury were clearly arbitrary or tantamount to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The author's allegations do not show that the judge's instructions or conduct of the trial suffered from such defects in the present case. In this respect, therefore, the author's claims as submitted do not come within the competence of the Committee and, in that sense, fall outside the scope of protection provided by article 14, paragraph 1, of the Covenant. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

5.3 As to the claim that the author could not obtain the attendance and the testimony of witnesses on his behalf, the Committee notes that the author has failed to substantiate this allegation sufficiently, for purposes of admissibility. In particular, it is not explained why his attorney did not call any defence witness. In this respect, accordingly, the author has no claim under the Covenant within the meaning of article 2 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol in respect of the author's claim under article 14, paragraph 1, of the Covenant, and under article 2 of the Optional Protocol in respect of his claim under article 14, paragraph 3 (e), of the Covenant;

(b) That this decision shall be communicated to the State party and to the author.

Notes

[a] No other details are provided on the facts of the case.

F. Communication No. 310/1988, M.T. v. Spain (Decision of 11 April 1991, adopted at the forty-first session)

Submitted by: M.T. (name deleted)

Alleged victim: The author

State party concerned: Spain

Date of communication: 17 February 1988 (date of the initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 11 April 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication is a Spanish citizen, born in 1954. At the time of submission he was detained in Finland, awaiting extradition to Spain. He alleges to be a victim of a violation of article 7 of the International Covenant on Civil and Political Rights by the Government of Spain. The Optional Protocol entered into force for Spain on 25 April 1985. The author is represented by counsel.

Facts as submitted by the author

2.1 The author, a former political activist, states that he lived in France from 1957 to 1979. From 1974 to 1977, he served a prison sentence for acts of sabotage committed against Spanish property in France. In 1979, he returned to Spain. He acknowledges that he was aware that some of his former friends had formed a political organization, Action Directe, but explains that he never joined the organization.

2.2 On 19 March 1984, the Special Services of the Spanish Guardia Civil arrested the author. He was detained for 10 days, during which time he was allegedly tortured repeatedly by the Guardia Civil and forced to sign a "confession" incriminating himself as a member of a terrorist group. During this period, the author also made statements to the examining magistrate in charge of the case. He was released because of several contradictions in his case.

2.3 On 26 August 1987, he travelled to Finland and requested political asylum. On 8 October 1987, he was taken into custody by the Finnish security police, in application of the Aliens Act. On 16 December 1987, the Government of Spain, through Interpol, requested the author's extradition. On 4 March 1988, the Supreme Administrative Court of Finland decided that the author's detention under the Aliens Act was lawful and on 10 March the Minister of Justice approved his extradition. He was extradited to Spain on 28 March 1988. a/

2.4 On 14 October 1988, the Juzgado Central de Instrucción convicted the author of armed robbery and sentenced him to seven years' imprisonment. He is currently appealing his conviction to the Supreme Court of Spain and remains on bail.

Complaint

3. The author claims that the treatment he was subjected to in the Carabanchel prison in Madrid in March 1984 violated article 7 of the Covenant, and that in spite of the fact that the Optional Protocol only entered into force for Spain on 25 April 1985, the Committee should consider itself competent to consider his claim, since the torture allegedly suffered in 1984 continues to have "immediate effects", in that he was extradited from Finland allegedly on the basis of his 1984 confession. He also states that he fears that he will again be subjected to torture in Spain.

State party's observations

4.1 The State party submits that with regard to the allegation of torture in 1984, the communication is inadmissible *ratione temporis*. It disputes that the alleged violation could be deemed as continuing after the entry into force of the Optional Protocol for Spain. Further, it submits that the extradition request of 16 December 1987 was based primarily on admissions made by the author before the examining magistrate in charge of the earlier case; the author had never claimed that these statements were made under duress.

4.2 The State party further argues that the author has failed to exhaust domestic remedies. Since torture constitutes an offence under article 204 bis of the Spanish Civil Code, the author could have denounced the alleged events before the competent civil and criminal tribunals. He could have filed such a complaint with the Spanish authorities any time after March 1984 and thereby given the Government of Spain the possibility of investigating the alleged violation. In order to satisfy the requirement of exhaustion of domestic remedies, it was not necessary for the author to prove that he was a torture victim, but he should have at least filed a complaint. If dissatisfied with the judicial process, the author could still have had recourse to the constitutional remedy of *amparo*, pursuant to article 53 of the Constitution and article 43 of the Ley Orgánica del Poder Judicial.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 87 of its rules of procedure, whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 With regard to the application of the Optional Protocol for Spain, the Committee recalls that it entered into force on 25 April 1985. It observes that the Optional Protocol cannot be applied retroactively and concludes that the Committee is precluded *ratione temporis* from examining acts said to have occurred in March 1984, unless these acts continued after the entry into force of the Optional Protocol and allegedly constituted a continued violation of the Covenant or had effects that themselves constitute a violation of the Covenant.

5.3 The Committee has also noted, *ex officio*, that the author's allegation that his confession in 1984 was obtained under duress could raise issues under article 14, paragraphs 1 and 3 (g), of the Covenant. However, this alleged duress equally did not continue after the entry into force of the Optional Protocol for Spain.

5.4 Accordingly, the Committee finds that it is precluded *ratione temporis* from examining these allegations.

6. The Human Rights Committee therefore decides:

(a) The communication is inadmissible;

(b) This decision shall be communicated to the State party and to the author through his counsel.

Notes

a/ In its views in communication No. 291/1988, dated 2 April 1990, the Committee found that the author's inability to challenge his detention under the Finnish Aliens Act during the first week of detention constituted a violation of article 9, paragraph 4, of the Covenant.

G. Communication No. 313/1988, D.D. v. Jamaica (Decision of 11 April 1991, adopted at the forty-first session)

Submitted by: D.D. (name deleted)

Alleged victim: The author

State party concerned: Jamaica

Date of communication: Undated (received on 1 June 1988)

The Human Rights Committee, established under article 28 of the International Covenant of Civil and Political Rights,

Meeting on 11 April 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial undated submission received on 1 June 1988 and subsequent submissions) is D.D., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of article 14 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 The author states that he was arrested on 5 February 1983 near his home in Port Antonio and charged with murder jointly with two other individuals. At the conclusion of the trial in the Home Circuit Court in Kingston, one of his co-defendants was acquitted, the other received a lesser sentence, whereas the author was found guilty as charged and sentenced to death. The author claims to be innocent and that he has no knowledge of the facts of the murder for which he was convicted. No information is provided about the dates of the trial or of the sentence, or about the circumstances under which the trial took place. The Court of Appeal of Jamaica dismissed his appeal on 8 June 1987. After submitting his case to the Human Rights Committee, the author secured pro bono assistance of a London law firm for purposes of a petition for special leave to appeal to the Judicial Committee of the Privy Council.

2.2 The author states that, after his arrest, one of the arresting officers, who had known him when he lived at Kingston, took him to the police station for an identity check. Although he continued to deny any involvement in the crime when interrogated by the arresting officers, he was charged with murder and taken to a preliminary hearing in the Gun Court on 10 February 1983.

2.3 During the preliminary hearings, the author was represented by counsel; two witnesses appeared for the prosecution. The first testified that he did not know the author, whereas the second initially claimed that he had known the author for one year and subsequently, under cross-examination by the defence attorney, admitted that he had known him for much longer. The first witness did not testify in the Home Circuit Court; the second did.

2.4 By telefax submission of 19 March 1991, author's counsel confirms that she is endeavouring to file a petition for special leave to appeal to the Judicial Committee of the Privy Council, that the preparations for such a petition are proceeding, and that she has obtained most of the court documents in the case.

Complaint

3.1 The author claims that during interrogation by the arresting officers he was repeatedly beaten. On two occasions he was allegedly administered electric shocks through a cord that had been put under tension. Furthermore, he was not placed on an identification parade, as is customary for individuals suspected of having committed a capital offence. He alleges that while a legal aid lawyer had been assigned to his case, the assistance of this lawyer was wholly inadequate. Additional irregularities allegedly occurred during the trial, in that the prosecution's main witness, who had testified during the preliminary inquiry, was not cross-examined, and no attempt was made to locate any witness to testify on the author's behalf. This is said to constitute a violation of article 14, paragraph 3 (e) of the Covenant.

3.2 As to the circumstances of his appeal, the author alleges that he was unable to consult with the legal aid attorney who had been assigned to him for the appeal. He adds that numerous requests to meet with this attorney remained unanswered.

State party's observations

4. The State party contends that the communication is inadmissible on the ground of non-exhaustion of domestic remedies, since the author has failed to petition the Judicial Committee of the Privy Council for special leave to appeal.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 With regard to the requirement of exhaustion of domestic remedies, the Committee has taken note of the State party's contention that the communication is inadmissible because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal. It observes that the author has secured pro bono legal representation from a London law firm for this purpose, after submitting his case to the Human Rights Committee, and that his representatives are seeking to petition the Privy Council for special leave to appeal on his behalf. While expressing its concern about the apparent unavailability, so far, of relevant court documents in the case and the author's difficulties in securing legal assistance before the Privy Council, the Committee does not consider that a petition for special leave to appeal to the Judicial Committee of the Privy Council would necessarily be unavailable and, as such, a remedy that authors need not exhaust before addressing a communication to the Committee. It therefore finds that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

5.3 With regard to the author's allegations under articles 7 and 10 of the Covenant, concerning torture and beatings during his detention, the Committee notes that although a legal aid lawyer had been assigned to the author, his submissions to the Committee do not show that he complained to the competent authorities about these events, or that local remedies before the Jamaican courts in respect of this issue have been exhausted. In this respect, therefore, the Committee concludes that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That the State party be requested to make the complete set of the court documents available to the author and to his representative before the Privy Council without further delay, should these documents not be in his possession yet, so as to permit an effective recourse to the Judicial Committee of the Privy Council;

(c) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party shall be requested, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author before he has had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

(d) That this decision shall be transmitted to the State party, to the author and to his counsel.

H. Communication No. 315/1988, R.M. v. Jamaica (Decision of 26 October 1990, adopted at the fortieth session)

Submitted by: R.M. (name deleted)

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 30 June 1988 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant of Civil and Political Rights,

Meeting on 26 October 1990,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 30 June 1988 and subsequent submission) is R.M., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be innocent of the murder for which he was convicted and sentenced to death, and to be a victim of a violation of his human rights by Jamaica.

2.1 The author states that in July 1984 he accompanied a friend to Discovery Bay, St. Ann, to help collect money that someone owed to his friend. He claims that a quarrel ensued over the money and that he and his friend were attacked with knives and machetes. He fled towards the Discovery Bay main road, where he boarded a bus. Shortly thereafter, the bus was stopped by police and he was arrested. The body of the friend was found the next morning.

2.2 The author claims that his case was never thoroughly investigated, and that the Home Circuit Court convicted and sentenced him on the wholly circumstantial evidence that he had been seen running on the main road.

2.3 The author states that he appealed to the Court of Appeal and that his appeal was dismissed. At the time of submission in 1988 he had not applied for leave to appeal to the Judicial Committee of the Privy Council because of lack of financial means.

3. By decision of 15 July 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party and requested it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. It further requested the State party, under rule 86 of the rules of procedure, not to carry out the death sentence against the author while his communication was under consideration by the Committee. The author was requested to substantiate his allegation that he was detained for three months without charges against him, to further explain the circumstances of his trial and to clarify what he considers to have been unfair in the conduct

of his trial and to indicate whether he has sought legal aid, under the Poor Prisoners' Defence Act, for purposes of a petition for leave to appeal to the Judicial Committee of the Privy Council.

4. In his reply, dated 8 October 1988, the author states that he was arrested on 15 June 1984 and not charged until the last week of August 1984. He was convicted on 27 May 1987; the appeal was dismissed on 27 November 1987. He was defended by a legal aid attorney under the Poor Prisoners' Defence Act. He states that at the trial, he intended to call witnesses on his behalf, but his attorney advised against this because he felt it would prolong the case and pointed out that he had not received payment for his services. The lawyer allegedly informed him that payment would be required if he were to call witnesses on the author's behalf. The author further alleges that in the course of the trial, one of the prosecution witnesses changed his testimony to the author's favour, but the court refused to admit it. The author reiterates his principal complaint that the police made no effort to investigate what really happened to his friend on the day of the crime or to discover a motive or to trace eyewitnesses. The police and the court, the author alleges, relied on witnesses who had merely seen the two of them together before the incident and the author running away afterwards.

5. In its submission under rule 91, dated 2 December 1988, the State party argues that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, on the ground of non-exhaustion of domestic remedies, because the author had not applied, pursuant to Section 110 of the Jamaican Constitution, for special leave to appeal to the Judicial Committee of the Privy Council. No comments were received from the author. On 12 July 1990, the author's representative in London informed the Committee that she is endeavouring to file a petition for special leave to appeal to the Judicial Committee of the Privy Council on the author's behalf, but that she has not yet been able to obtain several documents considered to be relevant for purposes of such a petition. She has, however, obtained a copy of the written judgment of the Court of Appeal in the case.

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the matter has not been submitted to another instance of international investigation or settlement.

6.3 With regard to the requirement of exhaustion of domestic remedies, the Committee has taken note of the State party's contention that the communication is inadmissible because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal, pursuant to Section 110 of the Jamaican Constitution. It observes that the author has secured pro bono legal representation from a London law firm for this purpose, after submitting his case to the Human Rights Committee, and that his representative is endeavouring to file a petition for special leave to appeal on his behalf. While expressing concern about the apparent unavailability, so far, of relevant court documents in the case, the Committee does not consider that a petition for special leave to appeal to the Judicial Committee of the

Privy Council would be *a priori* ineffective and as such a remedy that authors need not exhaust before addressing a communication to the Committee. Accordingly, it finds that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

6.4 With regard to the practical operation of the system of legal aid in Jamaica, the Committee stresses that article 14, paragraph 3 (d), of the Covenant requires States parties to ensure proper legal assistance to persons accused of criminal offences at all stages of their trial and appeal, including appeals to the Judicial Committee of the Privy Council. In the light of article 6, paragraph 2, of the Covenant it is imperative that whenever legal aid is provided, it must be sufficient to ensure that the trial can be conducted fairly.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That the State party be requested to make all the relevant court documents available to the author and his counsel without further delay so as to permit an effective recourse to the Judicial Committee of the Privy Council;

(c) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party shall be requested, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author before he has had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

(d) That this decision shall be transmitted to the author and to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

I. Communication No. 316/1988, C.E.A. v. Finland (Decision of 10 July 1991, adopted at the forty-second session)

Submitted by: C.E.A. (name deleted)

Alleged victim: The author

State party concerned: Finland

Date of communication: 4 July 1988 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 10 July 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 4 July 1988 and subsequent correspondence) is C.E.A., a Swedish citizen. He is a representative of a marketing company with headquarters in Gothenburg, Sweden. He claims to be a victim of violations by Finland of articles 2, 14, paragraphs 1 and 3 (a), (b), (e) and (f), and 15 of the International Covenant on Civil and Political Rights.

2.1 The author states that the marketing company employed a Finnish lawyer, P.K., in a legal action against a Finnish company. The author was not satisfied with P.K.'s work and sued him in civil litigation for malpractice. He also filed a complaint with the general prosecutor against P.K., alleging several serious crimes, including blackmail, which resulted in charges being made against the latter. P.K. filed a counterclaim against the author. The actions were consolidated by the City Court of Helsingfors (Helsinki). In its judgment of 20 September 1984, the court fined the author for bringing unfounded criminal charges against P.K.

2.2 The author alleges that the City Court disregarded the principle of equality before the law, contrary to article 14, paragraph 1, of the Covenant, and that it discriminated against him on account of his Swedish nationality.

2.3 In substantiation, the author states that he was not permitted to present his arguments in his mother tongue, despite the fact that Swedish is one of the official languages of Finland and despite the fact that he is not proficient in Finnish. This, he claims, violated his rights under article 14, paragraphs 3 (a) and (f) of the Covenant.

2.4 The author alleges that P.K. was given the prosecutor's memorial in advance of the trial, thereby denying him "equality of arms". When the author discovered this during the trial, he requested an adjournment. This was denied by the judge. This, he asserts, constituted a violation of his right under article 14, paragraph 3 (b), of the Covenant to be afforded adequate time "for the preparation of his defence".

2.5 The author alleges that the court refused to allow him to call two witnesses on his behalf and failed to register the expert written testimony of one of these witnesses. This, he alleges, constitutes a violation of his rights under article 14, paragraph 3 (e), of the Covenant. He states that he specifically invoked the Covenant in his appeal to the Court of Appeal on this issue, but his appeal was rejected on 6 June 1985.

2.6 The author did not seek leave to appeal from the judgement of the Court of Appeal to the Supreme Court. Instead, he sought to invoke an extraordinary remedy by applying to the Supreme Court for the annulment of the judgements of the City Court and the Court of Appeal on account of miscarriage of justice (domvilla) and referral of the case to the City Court for retrial. The application was denied by the Supreme Court on 13 November 1985. In 1986, the author again filed applications to the Supreme Court to allow the extraordinary remedy to go forth because of domvilla. In his opinion, the Supreme Court had been remiss in its earlier decision to reject the application, because of the alleged serious breaches of the various provisions of article 14 of the Covenant, in particular the minimum guarantees set out in article 14, paragraph 3, for the determination of criminal charges. On 30 September 1987, the Supreme Court again rejected the application.

2.7 The author contends that P.K. should not have been allowed to file a counterclaim against him personally in the City Court, since he had been acting on behalf of his company. This, the author alleges, constituted a violation of article 15 of the Covenant.

2.8 The author further claims that the Finnish courts are obliged to apply the Covenant ex officio, stating that it was incorporated into Finnish law by Act No. 108 of 1976. Their alleged persistent failure to do so, he claims, constitutes a violation of article 2, paragraphs 2 and 3.

3. By decision of 15 July 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party and requested it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication.

4.1 In its submission under rule 91, dated 21 October 1988, the State party contends that the communication should be declared inadmissible, both because the author has failed to exhaust available domestic remedies and also because the communication fails to relate to any of the rights recognized by the Covenant.

4.2 Describing the general system of judicial appeal in Finland, the State party notes, in particular, that the author has only applied to the Supreme Court for the extraordinary remedy of domvilla but has not applied for leave for ordinary review.

4.3 The State party further notes that the author has not been "charged with a criminal offense" and that the provisions of articles 14, paragraph 3, and 15, as invoked by him, are simply not applicable in his case.

4.4 As to the allegations of violations of the right to equality before the courts under article 14, paragraph 1, of the Covenant, the State party contends that the author should have provided all the relevant court records and decisions. By not doing so, the State party argues, the author has failed to submit sufficient evidence in substantiation of his allegations and that his communication should be declared inadmissible for that reason also.

4.5 Finally, the State party contends that the author's allegations mostly concern the interpretation of Finnish law and the assessment of evidence by Finnish courts. The Covenant, the State party maintains, is not applicable to such matters, nor can the Human Rights Committee be seen as a "fourth instance" entitled to carry out such review.

5.1 In his comments, dated 20 December 1988, the author concedes that he has not sought leave to appeal to the Supreme Court but asserts that he has not done so because, as he was advised by counsel, such leave is unnecessary in cases of gross procedural errors, in the light of the alternative remedy of domvilla. In such cases, moreover, domvilla would provide more adequate relief.

5.2 The author also asserts that the State party does not address his claims under article 2 of the Covenant and that these are the most important ones. In the author's opinion, the wording of article 2 implies that he does not need to apply for leave to appeal to the Supreme Court.

5.3 The author maintains that the fact that he was privately prosecuted in contentious civil litigation and sentenced to pay a fine by the City Court of Helsingsfors, in effect means that he was charged with a criminal offence.

5.4 The author states that the court records and decisions in his case amount to some 800 pages. He maintains that the Supreme Court decisions which he has provided (concerning the alleged domvilla) illustrate the grave procedural injustice which allegedly permeates the Finnish judicial system. He claims that the burden of submitting all relevant documents would be better placed on the State party, as it is in a better position to acquire them.

5.5 Finally, the author claims that he is not seeking "fourth instance" review of factual findings or interpretation of domestic law. Rather, he claims that the issue is the relation between the Finnish legal system, as such, and Finland's obligations under the Covenant.

5.6 In further submissions, the author has furnished the Committee with written statements made and signed by a Finnish professor of law, expressing the opinion (a) that the author's communication to the Human Rights Committee discloses that serious procedural errors were made by the court of first instance and that his rights under article 14, paragraph 1, and article 14, paragraph 3, of the Covenant were not respected; (b) that the Covenant is directly applicable in Finnish courts, as having been incorporated into Finnish law; (c) that the author was justified in seeking the remedy of domvilla instead of applying for ordinary leave to appeal to the Supreme Court; (d) that, at any rate, his prospect of being granted leave for an ordinary appeal, had he so applied, would have been virtually non-existent, considering that the public prosecutor's request for leave to appeal in the same matter was rejected, and (e) that, accordingly, he has exhausted all domestic remedies.

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee observes that the author's allegations of violations of article 14, paragraph 3, and 15 of the Covenant do not appear to have any factual basis. It further observes that the provisions of article 2 of the Covenant, which lay down general obligations for States parties, cannot, in isolation, give rise to a claim in a communication under the Optional Protocol. Further, the claim that the author was discriminated against by the Finnish Courts and denied equality before the Courts because he is Swedish, is of a sweeping nature and has not been sufficiently substantiated. As to the claim that the author has suffered a violation of article 14, paragraphs 3 (c) and (f), of the Covenant, the Committee notes that even if article 14 were thought applicable in this case, the author has not shown that, as a Swedish citizen, he was entitled to rely on the official status of the Swedish language in Finland to require court proceedings to be conducted in Swedish. Nor has he substantiated that he needed an interpreter and requested, but was denied the assistance of an interpreter in accordance with article 14, paragraph 3 (f). The jurisprudence of the Committee shows that there is no right under the Covenant simply to have court proceedings conducted in the language of one's choice. a/

6.3 In the light of the above, the Committee does not deem it necessary to address the question whether the author has exhausted domestic remedies.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See the Committee's views in communications Nos. 221/1987 and 323/1988, Yves Cadoret and Hervé Le Bihan v. France, views adopted on 11 April 1991, para. 5.7; 327/1988 Hervé Barzhig v. France, views adopted on 11 April 1991, para. 5.6.

J. Communication No. 341/1988, Z.P. v. Canada (Decision of 11 April 1991, adopted at the forty-first session)

Submitted by: Z.P. (name deleted)

Alleged victim: The author

State party concerned: Canada

Date of communication: 12 April 1988 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 11 April 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (first submission dated 12 April 1988 and subsequent correspondence) is Z.P., a Yugoslav citizen formerly residing and employed in Montreal, Canada, at present residing in Yugoslavia. He claims to be the victim of a violation of his human rights by Canada. Although he does not specifically invoke the International Covenant on Civil and Political Rights, it appears from his submissions that his allegations relate to articles 9 and 14 of the Covenant.

Facts as submitted by the author

2.1 The author, a technician in civil engineering, lived in Canada from September 1970 to December 1981, and was employed with a Montreal engineering company as an industrial draftsman. In December 1981, he was deported to Yugoslavia.

2.2 The author was accused of having raped, in 1978 and 1979 respectively, two Canadian women, F.B. and H.R. On 30 April 1979, he was sentenced to three years' imprisonment for the rape of F.B. and on 26 March 1980, he was sentenced to seven years' imprisonment for the rape of H.R. In both instances, Z.P. claimed to be innocent of the charges.

2.3 In the case of F.B., the author was formally charged with rape by the Montreal Urban Community Police on 11 July 1978. Z.P. was assigned a legal representative, Maître J.C., and asked for a trial by jury. On 20 December 1978, he instead opted for a trial before a single judge. His trial started before the Montreal Court of Assizes (Cour des Sessions de la Paix) on 29 March 1979. On 10 April 1979 he was found guilty as charged and the sentence was pronounced on 30 April 1979. On 8 May 1979, Z.P. applied for leave to appeal against his conviction to the Québec Court of Appeal; two days later, the Court of Appeal granted leave to appeal. On 21 March 1980, the transcript of the proceedings and the evidence before the court of first instance were submitted to the Court of Appeal, which heard the appeal on 19 January 1981 and dismissed it on 13 February 1981. On 13 March 1981, Z.P.

sought leave to appeal to the Supreme Court of Canada; the Supreme Court refused leave to appeal on 22 June 1981.

2.4 In the case of H.R., the author was arrested on 25 March 1979 and charged with rape the following day, i.e., three days before the beginning of his trial in the case of F.B. Z.P. was represented by the same lawyer who defended him in the case of F.B., and he again initially asked for a trial by jury. On 23 April 1979, he changed his mind and opted for a trial before a single judge; a trial in camera was ordered at the request of the prosecutor. On 26 April 1979, the author's lawyer, Maître J.C., asked to be removed from the case relating to the rape of H.R., and several lawyers handled later stages of the case.

2.5 On 15 November 1979, Z.P. applied for permission to assume his own representation and entered a plea of not guilty. A lawyer representing the Yugoslav Embassy in Canada acted as his counsel. The case was heard between 15 November 1979 and 28 February 1980; on 29 February 1980, Z.P. was found guilty as charged; sentence was passed on 26 March 1980. On 16 May 1980, the author filed a formal notice of application for permission to appeal against conviction and requested an extension of the deadline as well as a judicial review. His case was heard on 15 September 1980 and dismissed on 26 September 1980. The author then sought leave to appeal to the Supreme Court but his petition was denied on 22 June 1981.

Complaint

3.1 The author claims that he did not have a fair trial in either of the criminal cases against him, and maintains that he is entitled to a re-trial before the Canadian courts.

3.2 In respect of the first rape charge, the author alleges that:

(a) He was found guilty in the absence of conclusive evidence against him;

(b) The trial judge was wrong to admit as evidence testimony concerning a similar act involving H.R., the victim of the second rape charge;

(c) The trial judge was wrong to admit as evidence contradictory statements made by the victim;

(d) The trial judge wrongly interpreted the author's words addressed to F.B. as threats against her;

(e) The judges of the Court of Appeal similarly failed to see that the words deemed to be threats against F.B. could not be used as evidence against him, since F.B. was no longer able to tell the court the content of the presumed threats;

(f) Both the trial judge and the judges on the Court of Appeal were wrong to admit as evidence testimony of a friend of F.B., who merely told the court that she had been informed that F.B. had been raped;

(g) Both the court of first instance and the Court of Appeal should have provided him with an interpreter, because of his insufficient mastery of English and French;

(h) The trial judge, at the conclusion of the trial, effectively acted as a "defence lawyer" for F.B., finding the author guilty on the basis of mere "suppositions".

3.3 In respect of the second rape charge, the author alleges that:

(a) He was framed by the police, who arrested him within a minute after H.R. left his apartment. He adds in this context that the police had already arrived in front of the building when H.R. left his flat;

(b) He was arrested for assault but later charged formally with a different offence, namely rape;

(c) The trial judge was wrong to admit as evidence a number of contradictory statements made by H.R.;

(d) The trial judge first misinterpreted and subsequently misused a statement given by H.R. to the effect that the author had used a pretext to lure her into his apartment;

(e) The trial judge was wrong to admit as evidence contradictory statements made by the arresting officer and the doctor who examined H.R. after the offence, once their evidence had been compared with that of H.R.;

(f) Both the court of first instance and the Court of Appeal should have provided him with an interpreter, because of his insufficient mastery of English and French;

(g) The Montreal Office of Legal Aid wrongly refused to provide him with the assistance of a lawyer during the trial and for purposes of preparing the appeal;

(h) The trial judge wrongly accepted as evidence testimony about a similar act involving F.B., the alleged victim of the first rape offence;

(i) He did not have all the court transcripts in his possession, which should have been made available to him free of charge;

(j) The trial judge refused to allow him to be tried in a public hearing before a jury.

State party's observations

4.1 The State party submits that the communication is inadmissible under articles 1, 2 and 3 of the Optional Protocol. It contends that Z.P. did not sufficiently support his allegations with facts to establish prima facie violations of the Covenant and that his claims, referring merely to violations of "the law of Canada and the Human Rights", do not meet the admissibility criteria of article 2 of the Optional Protocol. It further points out that the author in effect seeks a review of the evaluation of facts and evidence before the Canadian courts, and adds, with reference to the Committee's jurisprudence, that the Committee is not competent to review findings of fact made by national tribunals. To this extent, therefore, the State party considers the communication to be inadmissible as incompatible with the provisions of the Covenant.

4.2 In respect of the author's trial in the case of F.B., the State party notes that virtually all of the author's claims raise issues of fact and evidence. Only his claim that the courts did not provide him with an interpreter might conceivably raise issues under article 14, paragraph 3 (f), of the Covenant. The State party affirms, however, that the author failed to support this allegation adequately. It notes that he could have requested the assistance of an interpreter, or that his lawyer could have made such a request on his behalf; however, the records of both trials show that no request for an interpreter was made. Moreover, the court records reveal that the author was perfectly able to follow the proceedings and to express himself in English and/or in French.

4.3 In respect of the trial in the case of H.R., the State party reiterates its arguments laid out in paragraph 4.2 above in as much as the author's claim about the absence of an interpreter is concerned. As to his claim concerning the lack of legal assistance during the second trial, the State party points out that the author asked to defend himself during his trial in the court of first instance; furthermore, the records reveal that Z.P. was advised by a lawyer by virtue of a legal aid order and that, accordingly, he was given legal assistance in accordance with the Legal Aid Act. The State party therefore concludes that the author is estopped from arguing that he had to defend himself.

4.4 As to the issue of legal assistance for purposes of the appeal in the second trial, the State party explains that the author's request for legal aid was refused in the light of the representations he made to the Legal Aid Board, the evidence presented during the trial and the verdict of the court of first instance. Since the author did not present any facts to the effect that he had any arguable grounds of appeal, the Board concluded that he was not entitled under the Legal Aid Act to receive such aid for the purpose for which he had requested it. The State party adds that article 14, paragraph 3 (d), does not require a hearing in the physical presence of the applicant in order to determine his legal aid entitlements; in the author's case, a telephone conversation sufficed.

4.5 In respect of the claim that the author was unable adequately to prepare his defence owing to the alleged unavailability of relevant court documents, the State party contends that the author is merely complaining of his own omission. In fact, by letter dated 31 August 1981 drafted in adequate French, after he had exhausted his domestic remedies, Z.P. expressed interest in obtaining copies of the court transcripts and the court tapes. The State party submits that if the author had considered it essential for his defence to be in possession of the transcripts, it was his responsibility to request them.

4.6 With regard to the author's claim that he was entitled to a public trial before a jury, the State party notes that Z.P. himself, on 23 April 1979, opted for a trial before a single judge. Furthermore, it points out that article 14, paragraph 1, stipulates that the public may be excluded from all or part of a trial for reasons of morals - a request frequently made and granted in sexual abuse cases - and submits that the author has failed to adduce a single argument in favour of a public trial.

4.7 Finally, in respect of the allegation that there was a contradiction between the charge against the author at the time of the arrest and the charge under which he was tried, the State party submits that both articles 9, paragraph 2, and 14, paragraph 3 (a), were complied with, since what matters for the legal qualification of the offence is the information contained in the police report prepared after the arrest. Both the application to institute proceedings against Z.P., dated 25 March 1979 (the day of the arrest), and the written information submitted to the judge on 26 March 1979 refer to a rape charge.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, determine whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee notes that many of the author's allegations, both in connection with the case of F.B. and H.R., relate to the evaluation of facts and evidence by the trial judge. The Committee observes that it is generally for the appellate courts of States parties to the Covenant and not for the Committee to evaluate the facts and evidence placed before domestic courts and to review the interpretation of domestic law by national courts. Similarly, it is for the appellate courts and not for the Committee to review alleged errors by the judge in the conduct of a trial, unless it is apparent from the author's submission that the conduct of the trial was clearly arbitrary or tantamount to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The author has not shown that the conduct of the trials in question suffered from such defects. In this respect, therefore, the author's claims of unfair trials do not come within the competence of the Committee and, in that sense, fall outside the scope of protection provided by article 14, paragraph 1, of the Covenant. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

5.3 With respect to the claim that the author was denied the services of an interpreter, the Committee finds that Z.P. has failed to substantiate his claim sufficiently, for purposes of admissibility. The material before the Committee shows that the author could express himself in adequate English and French, and that he did not apply for an interpreter during the trial. The Committee reaffirms in this context that the requirement of a fair hearing does not obligate States parties to make the services of an interpreter available *ex officio* or upon application to a person whose mother tongue differs from the official court language, if the person is capable of expressing himself adequately in the official language. [a]

5.4 In respect of the claim that the author was refused legal aid for his appeal in the case concerning H.R., the case file reveals that the Montreal Legal Aid Board did examine the author's request, but concluded that the interests of justice did not require the assignment of legal aid. Accordingly, the author has not sufficiently substantiated his allegation, for purposes of admissibility, and this part of the communication is inadmissible under article 2 of the Optional Protocol.

5.5 As to the alleged violation of article 14, paragraph 3 (b), the Committee notes that the first time the author complained about the unavailability of the trial transcript was over two months after being denied leave to appeal by the Supreme Court. In the circumstances, he is estopped from invoking an *ex post facto* violation of his right to adequate time and facilities for the preparation of his defence. The Committee concludes that this part of the communication is inadmissible as an abuse of the right of submission, pursuant to article 3 of the Optional Protocol.

5.6 Finally, with regard to the claims of a violation of article 14, paragraph 1 (entitlement to a public hearing), and article 9, paragraph 2, the author has not sufficiently substantiated his allegation, for the purposes of admissibility, and this part of the communication is also inadmissible under article 2 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) The communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) This decision shall be communicated to the State party and to the author of the communication.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See views in communication No. 219/1986, para. 10.2, (*Guesdon v. France*), adopted on 25 July 1990.

K. Communication No. 354/1989, L.G. v. Mauritius (Decision of 31 October 1990, adopted at the fortieth session)

Submitted by: L.G. (name deleted)

Alleged victim: The author

State party concerned: Mauritius

Date of communication: 17 February 1989 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant of Civil and Political Rights,

Meeting on 31 October 1990,

Adopts the following:

Decision on admissibility*, **

1. The author of the communication (initial submission dated 17 February 1989 and subsequent submissions) is L.G., a Mauritian citizen and former barrister. He claims to be the victim of a violation of articles 1, 2, 3, 14, 15 and 26 of the International Covenant on Civil and Political Rights by Mauritius.

Facts as submitted

2.1 On 16 February 1979, the author was arrested in connection with the possession of parts of the proceeds from a robbery at a casino, perpetrated on the night of 21 January 1979. On 29 January 1979, a self-confessed participant in the robbery retained the services of the author and remitted two sums of money to him, first 3,000 rupees representing the author's legal fees and then 7,000 rupees to be put aside for the eventuality of retaining the services of senior counsel. Several days before the author's arrest, his client's wife requested the author to return the 7,000 rupees, allegedly because the client was ill and needed the money for medical expenses; she was accompanied by two plainclothes policemen who posed as relatives of the client. The author asked to personally meet his client, and a meeting was arranged at the client's house where, in the presence of the undercover agents, the author returned the 7,000 rupees to his client. Upon leaving the house, he was arrested in a nearby street, and charged with possession of stolen money.

2.2 The author claims that he was framed by the police, who were in exclusive charge of the investigation related to the robbery. He alleges that there was strong evidence that a number of individuals of Chinese origin were directly associated with the crime but that all the participants of Chinese origin except one either denied their participation in the hold-up or were never questioned by the police about it. He further indicates that the police, instead of completing its investigations within a short period of time, engaged in "secret dealing" with those participants in the hold-up who were of Chinese origin.

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* Pursuant to rule 85 of the Committee's rules of procedure, Mr. Rajsoomer Lallah did not participate in the examination of the communication or in the adoption of the Committee's decision.

** The texts of four individual opinions are appended.

2.3 During the trial the author's client appeared as the prosecution's principal witness, testifying that he had given the author the 7,000 rupees for safekeeping. On 12 August 1979, the court of first instance, in a two to one majority decision, convicted the author. He appealed, but on 5 August 1980, the Supreme Court confirmed the judgement of first instance. The author envisaged a further appeal to the Judicial Committee of the Privy Council but claims that this was bound to fail due to the fact that the grounds of appeal were limited to the court record and the issues of law were not of fundamental importance; moreover, he submits that the Privy Council very rarely intervenes on issues of fact. This information was imparted to him by an English professor whose services he had retained; as a result, the author chose not to proceed with his petition, and on 20 December 1980, the Privy Council dismissed his appeal for "non-prosecution", that is, failure to pursue the case.

2.4 Late in 1980, the author came across fresh evidence which led him to believe that the police inquiry had been "partial, discriminatory and deliberately selective". On 17 March 1981, however, he was summoned to appear before the full bench of the Supreme Court under Section 2 of the Legal Practitioners (Disciplinary Proceeding) Ordinance and advised to remove his name from the roll of practicing barristers. The author subsequently requested his removal from the Roll of Barristers so as to prevent the continuation of disciplinary proceedings against him. In 1983 and 1986, he submitted petitions for pardon to the Commission on the Prerogative of Mercy; both were rejected. Since 1981, he has unsuccessfully sought to obtain the assistance of the Mauritius Bar Council in his efforts to be readmitted to the roll of practicing barristers. In 1986, he contemplated a formal motion before the Supreme Court but was advised to contact the Attorney General's office instead, since a letter from the Attorney General would be sufficient for him to resume his practice. He wrote to the Attorney General but did not receive any reply.

2.5 Early in 1989, the author wrote to the Chief Justice, who recommended to him to apply for re-instatement under the Law Practitioner's Act 1984; the author did so. On 17 November 1989, the Chief Justice declined to issue the order for his re-instatement on the ground of the author's previous conviction.

Complaint

3.1 The author claims that there was no basis for suspending him indefinitely from the exercise of his profession. He notes that Mauritian legislation makes no provisions for a retrial in cases in which there exists new material evidence, which was unknown to the accused prior to the trial. As all criminal investigations are conducted by the police who have overall responsibility for a case, the judicial authorities may only require supplementary information with respect to the investigation but have no control over it. Once an investigation is completed, it is submitted to the

Crown Law Office. The author argues that at this juncture there exists a "no man's land" bound to create situations in which the administration of justice may be jeopardized. He notes that the institution of the examining magistrate (Juge d'instruction) is unknown in Mauritius. For these reasons, the author considers that he was not afforded a fair trial and is thus the victim of a miscarriage of justice.

3.2 With respect to the requirement of exhaustion of domestic remedies, the author states that he did not pursue his appeal to the Judicial Committee of the Privy Council because of the prohibitive costs involved, and because it would not, in his opinion, have constituted an effective remedy, as the Privy Council does not entertain an appeal based on facts. He claims that after the decision of the Chief Justice not to grant his request for re-instatement, the only effective remedy for him would be the enactment of new legislation allowing for a retrial in cases in which new material evidence becomes available after the conclusion of the trial, or new legislation vesting disciplinary powers in the Mauritian Bar Council along the same lines as those vested in the British Bar Council. He concludes that he has exhausted available judicial remedies, and affirms that the prolongation of the pursuit of remedies is not solely attributable to him.

State party's observations

4.1 The State party contends that the communication should be declared inadmissible pursuant to articles 2 and 5, paragraph 2 (b), of the Optional Protocol. It argues that it is inadmissible on the ground of non-exhaustion of domestic remedies because the author, although availing himself of several non-judicial remedies, failed to pursue the avenue provided for under Mauritian law: to first apply to the Registrar for reinsertion of his name on the Roll of Barristers, and, in the event of a negative decision, to seek judicial review of the Registrar's decision. The State party claims that the communication is also inadmissible because of the author's failure to pursue his petition for leave to appeal to the Judicial Committee of the Privy Council.

4.2 The State party further affirms that the communication is inadmissible pursuant to article 2, of the Optional Protocol, since it does not disclose a claim under article 2 of the Optional Protocol. It notes that in as much as the author's claim of a violation of article 14, on the ground that he had discovered new evidence not available to him during the trial, is concerned, the communication does not disclose in precise terms what this new evidence was. It contends that all the evidence referred to in the communication was available during the trial, and that the allegation of an "elaborate police frame up" amounts to no more than a personal conclusion drawn from evidence available at the time. Moreover, the State party observes, the Mauritian courts acted properly in deciding to rely on the evidence presented by the author's own client and that of other witnesses, after having directed them properly on issues of law, and that the object of the communication would convert the Human Rights Committee into a Court of Appeal on findings of fact.

Issues before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must ascertain, in accordance with rule 87 of its rules of procedure, whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 In respect of the author's claim that Mauritian law does not provide for a retrial in cases in which fresh material evidence becomes available after the conclusion of the trial, the Committee notes that no substantiation of such fresh material evidence has been made. Therefore, the author has failed to advance a claim under the Covenant within the meaning of article 2 of the Optional Protocol.

5.3 As to the author's claim that he has been unjustly denied re-instatement on the Roll of Barristers and that no remedy lies for this, the Committee notes that the author failed to apply for judicial review of the Chief Justice's decision of 17 November 1989. Until he avails himself of the possibility of a judicial review, no issue under article 14 of the Covenant arises. The author's claim is thus incompatible with the provisions of the Covenant within the meaning of article 3 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be transmitted to the State party and to the author.

[Done in English, French, Russian and Spanish, the English text being the original version.]

APPENDIX I

Individual opinion submitted by Ms. Christine Chanet and Mr. Birame Ndiaye pursuant to rule 92, paragraph 3, of the Committee's rules of procedure, concerning the Committee's decision to declare inadmissible communication No. 354/1989, L.G. v. Mauritius

[Original: French]

The authors of the present individual opinion endorse the Committee's decision to declare this communication inadmissible.

Nevertheless, they do not consider it possible to single out, as is done in paragraph 5.3 of the text of the decision, one provision of the Covenant among those referred to by the author of the communication in order to declare that the communication is incompatible with the provisions of the Covenant within the meaning of article 3 of the Optional Protocol.

When it considers a communication under the Optional Protocol, the Committee must ascertain whether the communication satisfies the requirements laid down successively in the provisions of the Optional Protocol.

In the case in question the complainant's allegations, both concerning the violations of which he claims to have been a victim and concerning the domestic remedies available to him to have those allegations accepted, are not sufficiently well substantiated to permit the conclusion that, in submitting his communication, L.G. met the conditions set out in article 2 of the Optional Protocol.

Christine CHANET

Birame NDIAYE

APPENDIX II

Individual opinion submitted by Mrs. Rosalyn Higgins and Mr. Amos Wako pursuant to rule 92, paragraph 3, of the Committee's rules of procedure, concerning the Committee's decision to declare inadmissible communication No. 354/1989, L.G. v. Mauritius

[Original: English]

Article 14, paragraph 6, of the Covenant refers, *inter alia*, to what remedy is required when a person's conviction has been reversed or he has been pardoned on the basis of new or newly discovered facts.

Such reversal of conviction, or pardon, occurs in various ways in different jurisdictions. We wish to make it clear that the basis of the Committee's decision, as explained in paragraph 5.2, should not be read as a finding by the Committee that article 14, paragraph 6, necessarily requires an entitlement to retrial.

Rosalyn HIGGINS

Amos WAKO

APPENDIX III

Individual opinion submitted by Mr. Nisuke Ando pursuant to rule 92, paragraph 3, of the Committee's rules of procedure, concerning the Committee's decision to declare inadmissible communication No. 354/1989, L.G. v. Mauritius

[Original: English]

I do not oppose the Committee's view that the author's claim that Mauritian law does not provide for a retrial in cases in which fresh material evidence becomes available after the conclusion of the trial has not been substantiated (paragraph 5.2).

However, had the claim been substantiated, the Committee would have been required to determine the compatibility with the provision of article 14, paragraph 6, of a legal system under which no retrial is permissible and pardon remains the only recourse available for a convicted person, even if fresh evidence conclusively shows that the conviction was pronounced erroneously. In this connection, I would like to make the following observations.

Article 14, paragraph 6, provides that: "When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered the punishment as a result of such a conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him."

It is possible to argue that this provision presupposes not only a legal system under which retrial is institutionalized, but also a legal system which does not allow for a retrial and under which pardon remains the only recourse available for the convicted person, even where new or newly discovered facts show conclusively that the conviction was arrived at erroneously, on the ground of the provision's wording "when his conviction has been reversed or he has been pardoned" (emphasis added).

While I do not intend to rule out this possibility, I feel obliged to express my concern about legal systems under which no retrial is permissible and pardon remains the only available recourse in such cases. For one thing, a retrial provides an opportunity for the judiciary to re-examine its own conviction and sentence in the light of fresh evidence and correct its errors. In my opinion, pardon being the prerogative of the executive, the institution of retrial is essential for the principle of independence of the judiciary. Furthermore, retrial ensures that the erroneously convicted person is given an opportunity to have his or her case re-examined in the light of fresh evidence, and to be declared innocent. If he or she is innocent, it would be difficult to justify why he or she should need to be pardoned pursuant to the prerogative of the executive.

Nisuke ANDO

APPENDIX IV

Individual opinion submitted by Mr. Bertil Wennergren pursuant to rule 92, paragraph 3, of the Committee's rules of procedure, concerning the Committee's decision to declare inadmissible communication No. 354/1989, L.G. v. Mauritius

[Original: English]

I associate myself with the individual opinion submitted by Mrs. Rosalyn Higgins and Mr. Amos Wako, but I want to draw attention to the wording of article 14, paragraph 6, where it indicates the ground for a reversal of conviction of pardon, namely "that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice". Such a ground should according to my opinion justify a claim under article 14, paragraph 5, regarding the availability of review of conviction and sentence by a higher tribunal according to law. However, the Committee's decision, as explained in paragraph 5.2, makes it clear that the author has failed to advance such a claim.

Bertil **WENNERGREN**

L. Communication No. 372/1989, R.L.A.W. v. the Netherlands (Decision of 2 November 1990, adopted at the fortieth session)

Submitted by:	R.L.A.W. (name deleted)
Alleged victim:	The author
State party concerned:	The Netherlands
Date of communication:	5 July 1989 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 2 November 1990,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 5 July 1989 and subsequent correspondence) is R.L.A.W., born on 25 November 1942 in Paramaribo (Suriname), currently residing in Utrecht, the Netherlands. He claims to be the victim of a violation by the Netherlands of article 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 On 28 August 1984, the District Court of Utrecht found the author guilty of rape and sentenced him to six months' imprisonment. The Court of Appeal of Amsterdam upheld the conviction on 8 July 1985, increasing the sentence to twelve months of imprisonment, of which six months were suspended for a two years period of probation. On 10 June 1986, the Supreme Court dismissed the author's appeal. Thus, the author claims to have exhausted domestic remedies. He has already served his term of imprisonment.

2.2 In the proceedings the prosecutor's office adduced to a 1974 penal investigation against the author, which had been discontinued. The author contends that this evidence unduly influenced the proceedings. In particular he argues that since he was not even indicted on the earlier occasion, he was never in a position to prove in a trial that he was innocent of the charges against him. He contends that since he did not violate the conditions for discontinuing the case as agreed upon with the public prosecutors office, he should not have been confronted with these previous charges.

2.3 The author contends that he was denied a fair hearing, alleging that the investigating authorities only sought to gather evidence against him. Facts that could have proved his innocence were not investigated, although he repeatedly requested their investigation. Therefore, the author claims that he was denied equality of arms. According to the author, the authorities of the Netherlands should have sought to prove his innocence.

2.4 With respect to the evidence presented by the prosecution on the 1974 criminal investigation against the author, counsel claims that it was highly prejudicial and that it should have been held inadmissible. Contrary to the State party's statement that the Court of Appeal in Amsterdam received from the attorney general only extracts of the 1974 case, counsel maintains that the complete file was annexed.

3. The Communication was transmitted to the State party on 14 November 1989 under rule 91 of the Committee's rules of procedure, requesting the State party to provide information and observations relevant to the question of the admissibility of the communication.

4.1 The State party notes that the author submitted an identical complaint to the European Commission of Human Rights on 4 November 1986. On 15 December 1988 the Commission found that the application was manifestly ill-founded and declared it inadmissible.

4.2 The State party confirms that all domestic remedies have been exhausted and that the procedure involving the European Commission of Human Rights had been concluded at the time the present communication was submitted.

4.3 The State party, however, objects to admissibility under article 2 of the Optional Protocol, contending that the author has no claim because he has not sufficiently substantiated his allegations. On the issue of the Public Prosecutions Department having precluded the possibility of a fair trial, the Government states that neither the case file nor any other source has revealed that the Public Prosecutions Department intended to induce the court to take the old case file into account in deciding what penalty to impose. Nor is there evidence that the court did so in any way. The old documents were not before the district and appeal court. However, the summary contents of an extract from the General Judicial Documentation Register were added to the case file at the district court, as is customary in criminal cases.

4.4 The State party points out that the Judicial Documentation and Certificates of Good Behaviour Act and the decree which supplements it contain provisions governing both the nature of the information to be recorded in penal and general judicial documentation registers and the maintenance of such registers in the interests of the proper administration of justice.

4.5 In this respect the Judicial Documentation Service records information on punishment sheets in the penal documentation registers. The Service enters into the registers the official police reports concerning natural and legal persons suspected of having committed an offence, which have been considered by the public prosecutor.

4.6 The State party explains that the purpose of the registers is among other things to provide the judiciary, including public prosecutors, with the fullest possible information pertaining to the criminal record of the suspect. The judiciary receives information from these registers in the form of an extract which is added to the case file. It notes that in the past, the Netherlands Supreme Court has overturned sentences when the lower courts took into consideration official records which contained extracts from the registers on prior judicial investigations that did not result in a conviction.

4.7 The State party indicates that the Supreme Court rejected the author's appeal on the following grounds: (a) pursuant to section 11, subsection 1 of the Judicial Documentation Act, the Judicial Documentation Service provides to criminal courts information which is customary to disclose during a trial; (b) the Court of Appeal has considered the submission of the documents by the Public Prosecutor to have been intended to provide clarifications which the Court may use as it sees fit; (c) the Court attached to the submission no consequence other than that mentioned under (b). Subsequently, the submission of the documents neither contravenes the right to a fair trial nor amounts to a violation of the principle of due process.

4.8 With regard to the alleged violation of the principle of equality of arms, the State party holds that proof of the accused being guilty as indicted can be accepted by the court only if the substance of the lawful evidence presented to it during the examination at the trial induces the court to believe it. Only the court's perception of the facts arising from examination at the trial, the statements made by the accused, witnesses and experts, and the written documents specified by the law are recognized as lawful evidence. The court considers the question of the suspect's guilt on the basis of the indictment, the trial examination and the facts as proven. If it is ascertained that a punishable offence has been committed, the court proceeds to consider the penalty.

4.9 Following the author's arrest, he was remanded in police custody and later held in pre-trial detention by order of the district court. On 16 March 1984 the district court ordered, at the request of the public prosecutor, a preliminary judicial examination, during which the examining magistrate examined various witnesses in the presence of the author's counsel. The author was also questioned at length. The author and his counsel were able to provide all the information they considered relevant. The examining magistrate completed the examination on 15 May 1984.

4.10 On 19 June and on 14 August 1984 the case came to trial and witnesses were examined at the author's request. The official report of the trial reveals that the court took into account the extract from the General Judicial Documentation Register, the documents relating to the remand in police custody and pre-trial detention, the documents drawn up by the examining magistrate in the course of the preliminary judicial examination and the official reports drawn up by the Utrecht Municipal Police on 15 March 1984. The court found the applicant guilty as charged, and sentenced him to 6 months imprisonment.

4.11 On 11 April 1985 the Amsterdam Appeal Court again heard defence witnesses. Proceedings were halted at the request of the applicant's counsel in order to question the victim. The hearing was resumed on 23 May and on 24 June 1985, when expert witnesses and the victim gave testimony. On the basis of the examination conducted at the hearing and the official reports of the examining magistrate, the applicant's sentence was increased to 12 months imprisonment, of which 6 were suspended for a period of 2 years.

4.12 On 10 June 1986 the Supreme Court found that a court deciding on the facts is entitled, within the limits defined by the law, to select those items from the body of available evidence which it considers expedient from the point of view of reliability and to set aside those which it deems of no evidentiary value. The Supreme Court rejected the appeal.

4.13 The State party asserts that the criminal proceedings conducted against the author in no way violated the principle of equality of arms. Both the author and the Public Prosecutions Department were given the opportunity by the first and second instance courts to furnish all information which might have been relevant to the proceedings. Both courts reached their judgement on the basis of the lawful evidence.

5. In response to the State party's submission under rule 91, the author asserts that, notwithstanding the State party's contention, the Attorney-General presented the complete file of the 1974 case to the Court of Appeal and that the abstracts were submitted both to the courts of first and second instance.

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 Article 5, paragraph 2 (a), of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. The Committee has ascertained that the case is not under examination elsewhere. The consideration of the same matter in 1986-88 by the European Commission of Human Rights does not, however, preclude the Committee's competence.

6.3 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the State party has confirmed that the author has exhausted domestic remedies.

6.4 The Committee has taken note of the State party's submission and of the texts of the decisions of the Court of Appeal and Supreme Court. The author has failed to refute in State party's contention that his conviction was based on various kinds of evidence, including witnesses testimony, or to adduce other facts in substantiation of his allegation that the conviction was tainted by the use of inadmissible or unlawful evidence, and because of that unfair. The Committee, therefore, finds this aspect of the communication inadmissible as not stating a claim under article 2 of the Optional Protocol.

6.5 As to the principle of equality of arms, a careful reading of the author's submission does not reveal sufficient evidence to show, for purposes of admissibility, that the State party failed to investigate facts that could have proven his innocence. Moreover, the trial and appeal records show that the author had ample opportunity to call and cross-examine witnesses. In this regard the claim is not substantiated within the meaning of article 2 of the Optional Protocol. As to the court's evaluation of facts and evidence, it is the Committee's consistent jurisprudence that this is properly a matter for the appellate courts of States' parties. a/ It is not, in principle, for the Committee to review the facts and the evidence evaluated by national courts, unless it can be ascertained that there is a clear denial of justice.

7. The Human Rights Committee therefore decides:

(a) The communication is inadmissible under article 2 of the Optional Protocol;

(b) This decision shall be transmitted to the State party, to the author and his counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

[a] For an application of this principle, see Communications Nos. 201/1985 (*Hendriks v. Netherlands*), views adopted on 27 July 1988, para. 10.4; and 369/1989 (*G.S. v. Jamaica*), declared inadmissible on 8 November 1989, para. 3.2.

M. Communication No. 389/1989, I.S. v. Hungary (Decision of 9 November 1990, adopted at the fortieth session)

Submitted by: I.S. (name deleted)

Alleged victim: The author

State party concerned: Hungary

Date of communication: 4 December 1989 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 9 November 1990,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 4 December 1989 and subsequent correspondence) is I.S., a Hungarian citizen, presently imprisoned at Budapest. He claims to be the victim of a violation of his human rights by Hungary. The Optional Protocol entered into force for Hungary on 7 December 1988.

2.1 The author was arrested on 4 January 1986 and charged with attempted homicide. On 30 September 1986, he was sentenced to 12 years' imprisonment by the Metropolitan Court; by decision of 11 February 1987, the Supreme Court of Hungary, confirmed the sentence. In October 1988, the author sought to have the case re-opened, but the court of first instance found that the grounds he had submitted were insufficient and rejected his application.

2.3 As to the facts of the case, the author states that he and his former girlfriend had been quarrelling for several months and that on 27 December 1985 they decided to separate. The author felt depressed because of the separation and was given sedatives on prescription. In an effort at reconciliation, the author and his friend decided to spend New Year's eve together. Since during that evening they quarrelled incessantly, the author decided to commit suicide with a knife, which he had found in the kitchen. The author admits that at this stage, he was unbalanced already under the influence of sedatives and alcohol he had consumed. He left the apartment but almost immediately decided to return, so as to commit suicide in front of his friend and the other guests. When the mother of his friend refused to let him in, he forced his entry, upon which he was allegedly assaulted by the guests. The author claims that it was during his attempts to fight off the attack that he accidentally injured his friend with the knife, which he had held in his hand all the time.

2.4 The author claims that the trial against him was unfair and biased, noting that the evidence against him was contradictory; in particular the mother of his ex-girlfriend is said to have committed perjury. Furthermore, he submits that his friend should not have been discharged of her obligation to testify during the trial on the ground that they had been cohabiting, since, at the time of the offence, they were in fact no longer living together. The author states that her testimony would have supported his; i.e. that the injuries were inflicted accidentally.

3.1 Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

3.2 The Committee has considered the material submitted by the author. It notes that the author's claims relate primarily to the evaluation of evidence by the Hungarian courts. It reaffirms that while article 14 of the Covenant guarantees the right to a fair trial, it is for the appellate courts of States parties to the Covenant to evaluate the facts and the available evidence in a particular case. a/ From the information submitted by the author, the Committee has no evidence that the Hungarian courts did not properly evaluate the evidence against him or that they otherwise acted in ways that would amount to arbitrariness or to a denial of justice. In the circumstances, the Committee concludes that the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

4. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See inadmissibility decision adopted on 8 November 1989 (communication No. 369/1989 - G.S. v. Jamaica), para. 3.2.

N. Communication No. 409/1990, E.M.E.H. v. France (Decision of 2 November 1990, adopted at the fortieth session)

Submitted by: E.M.E.H. (name deleted)

Alleged victim: The author

State party concerned: France

Date of communication: 19 December 1989 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 2 November 1990,

Adopts the following:

Decision on admissibility

1. The author of the communication dated 19 December 1989 is E.M.E.H., a French citizen of Moroccan origin, aged 72. He claims to be the victim of a violation by France of article 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for France on 17 May 1984 and for Algeria on 12 December 1989.

2.1 From 1941 to 1963, the author was a full-time employee with the Chemins de Fer Marocains (C.M.F.). In 1963 he was transferred to the Société Nationale des Chemins de Fer Algériens (SNCFA). He served as station manager ("Chef de gare lère classe au 9ème échelon") until 1972. In 1973, he retired and received from the Algerian SNCFA the pension he was entitled to, until 1983, when he moved to France. By letter of 4 February 1984 from the SNCFA Pension fund in Algiers, he was informed that, pursuant to Article 53, Title V of Law No. 83-12 of 2 July 1983, the payment was suspended on the ground that pensions are not paid outside the national territory of Algeria.

2.2 The author contends that his situation is similar to that in Communication No. 196/1985 (I. Gueye and 742 retired Senegalese Soldiers of the French Army v. France), in which the Human Rights Committee had found, in its views adopted on 3 April 1989, a violation of article 26, because retired Senegalese soldiers who had served in the French army prior to Senegal's independence received lower pensions than other retired soldiers of French nationality.

2.3 The author points out that he served for thirty-two years in two countries, one which had been part of France until 1962 (Algeria) and the other which had been a protectorate until 1956.

2.4 With respect to the exhaustion of domestic remedies, the author states that he wrote *inter alia*, to the Board of the French National Railways, the French Minister of Transports, the Minister of Foreign Affairs, the Prime Minister and the President of the Republic of France. It appears from the context of his submission that he did not submit his case to any French tribunal. He does not mention what steps, if any, he took before Algerian administrative or judicial instances.

3.1 Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

3.2 With respect to article 1 of the Optional Protocol, the Committee reaffirms that it may only receive and consider communications from individuals subject to the jurisdiction of a State party to the Covenant and Optional Protocol "who claim to be victims of a violation by that State party of any of their rights set forth in the Covenant." (emphasis added) In this connection the Committee notes that although the author has addressed his complaint against France, his grievances actually relate to the laws and regulations in so far as they govern the retirement practices of the Algerian SNCFA. Although the author has, since his retirement, set up residence in France and is generally subject to French jurisdiction, he does not come within French jurisdiction in respect of his claims to retirement benefits from the Algerian SNCFA. Moreover, the Committee finds that the facts of this communication are materially different from those of communication No. 196/1985, in which the retired Senegalese Soldiers received payments from the French State pursuant to the French Code of Military Pensions, whereas in the instant case E.M.E.H. never received payments from France but rather from the Algerian SNCFA, which also discontinued them. Accordingly, the Committee cannot entertain E.M.E.H.'s communication against France under article 1 of the Optional Protocol.

4. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and, for information, to the State party.

[Done in English, French, Russian and Spanish, English being the original version.]

O. Communication No. 413/1990, A.B. v. Italy (Decision of 2 November 1990, adopted at the fortieth session)

Submitted by: A.B. *et al.* (names deleted)

Alleged victims: The author and 14 other persons

State party concerned: Italy

Date of communication: 30 April 1990 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 2 November 1990,

Adopts the following:

Decision on admissibility

1. The authors of the communication are A.B., President of the Union für Südtirol, and 14 other members of the executive committee of the Union. All are Italian citizens. The author and two other signatories are delegates to the Provincial Council of the autonomous Province of Bozen-South-Tirol (Bolzano, Alto Adige). The authors claim that the rights of the people of South Tirol under article 1 of the International Covenant on Civil and Political Rights have been violated by Italy.

2.1 The authors allege that the right of self-determination of the people of South Tirol has been violated by numerous acts and decrees adopted by the Italian Parliament, which are said to encroach on the "autonomous legislative and executive regional power" of the Province, provided for in the De Gasperi-Gruber Accord of 5 September 1946 (the "Paris Agreement") and developed further in the Autonomy Statutes of 1948 and 1972. They refer to 33 decisions of the Italian Constitutional Court since 1983, concerning actions brought by the South Tirol Provincial Assembly which upheld the powers of direction and control of the Italian Government over matters previously held to be within the competence of the Province. They allude to the underlying grievance in only one of these suits, namely that Law No. 183 of 18 May 1989 "about safeguard of the soil" requires plans concerning the "catchment area" of the Etsch Valley to be approved by the Council of Ministers.

2.2 An advisory opinion of the Procedural Aspects of International Law Institute, appended to the communication, refers to more specific grievances presumably shared by the authors. These include: Law No. 217 of 17 May 1983 which establishes State control over tourism and hotel classifications; laws of 1982 and 1987 concerning housing subsidies, Law No. 529 of 7 August 1982 allowing hydroelectric concessions to remain in private hands after the expiration of their grants, thus by-passing provincial control (most of the electricity is consumed in other regions of Italy); failure of the State to transfer property to the province, as provided by article 68 of the 1972 Autonomy Statute; denial of unilingual trials in the defendant's mother tongue; and lack of ethnolinguistic proportionality in public employment. All of the above have been upheld by the Constitutional Court, with the exception of the property question, which was pending before the Court of Cassation as of November 1988.

2.3 According to the authors, the Italian Government concedes the validity of the Paris Agreement in international law but considers the Autonomy Statute of 1948 to constitute fulfilment of its obligations thereunder. The Government considers the Autonomy Statute of 1972 to be a purely unilateral political act, while the authors claim that it is a result of the "package" agreement of 1969 between Austria and Italy arising out of disputes concerning the Paris Agreement.

2.4 As there is no appeal from decisions of the Italian Constitutional Court, and as the population of South Tirol is not sufficiently numerous to initiate a constitutional amendment, the authors claim that domestic remedies have been exhausted.

2.5 The matter of implementation of the Paris Agreement was taken up by the United Nations General Assembly in 1960 and 1961 (G.A. Resolution 1497 (XV) and G.A. Resolution 1661 (XVI)) and the European Commission of Human Rights (Opinion of 31 March 1960, Application No. 788/60) as well as in the above-mentioned negotiations between Austria and Italy in 1969.

3.1 Before considering any claims contained in a communication, the Human Rights Committee must, pursuant to rule 87 of its rules of procedure, ascertain whether or not it is admissible under the Optional Protocol to the Covenant.

3.2 With regard to the issue of the authors' standing under the Optional Protocol, the Committee recalls its constant jurisprudence that pursuant to article 1 of the Optional Protocol it can receive and consider communications only if they emanate from individuals who claim that their individual rights have been violated by a State party to the Optional Protocol. While all peoples have the right of self-determination and the right freely to determine their political status, pursue their economic, social and cultural development, and may, for their own ends, freely dispose of their natural wealth and resources, the Committee has already decided that no claim for self-determination may be brought under the Optional Protocol. a/ Thus, the Committee is not required to decide whether the ethno-German population living in South Tirol constitute "peoples" within the meaning of article 1 of the International Covenant on Civil and Political Rights.

4. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be transmitted to the author and, for information, to the State party.

[Done in English, French, Spanish and Russian, English being the original version.]

Notes

a/ See Committee's views in communication No. 167/1984 (B. Ominayak and the Lubicon Lake Band v. Canada), decision of 26 March 1990, para. 32.1; communication No. 318/1988 (E.P. et al. v. Colombia), inadmissibility decision of 25 July 1990, para. 8.2.

P. Communication No. 419/1990, O.J. v. Finland (Decision of 6 November 1990, adopted at the fortieth session)

Submitted by: O.J. (name deleted)

Alleged victim: The author

State party concerned: Finland

Date of communication: 9 April 1990

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 6 November 1990,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 9 April 1990 and subsequent correspondence) is O.J., a Finnish citizen residing in Turku, Finland. In her first submission, she claims that her rights under articles 2, 7, 9, 14, 16 and 17 of the International Covenant on Civil and Political Rights have been violated by Finland. In her second submission, she invokes articles 2, 5, 14, paragraphs 1 and 26.

2.1 The author claims that some real estate belonging to her was expropriated for purposes of construction of a road. The decision was allegedly taken on the basis of inaccurate and incomplete records and maps. She claims that the decision was unduly influenced by a wealthy, interested third party, who is, however, unidentified in the communication. Two of the four legal landmarks demarcating her property are missing. As it is a criminal offense in Finland to remove legal landmarks, she has requested a criminal investigation in this respect but claims that no action has been taken by the authorities.

2.2 The author claims that domestic remedies have been exhausted with the Supreme Court's decision (No. M89/196) of 13 October 1989. She subsequently submitted a petition to the Ombudsman of Finland on 7 December 1989, but has received no reply.

3.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, ascertain whether or not it is admissible under the Optional Protocol to the Covenant.

3.2 The Committee notes that the author's claims relate primarily to an alleged violation of her right to property, which she indicates is guaranteed by the Constitution of Finland. The right to property, however, is not protected by the International Covenant on Civil and Political Rights. Thus, since the Committee is only competent to consider allegations of violations of any of the rights protected under the Covenant, the author's allegations with regard to expropriation are inadmissible *ratione materiae*, under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant. In respect of the author's allegations relating to other provisions of the Covenant, in particular, her claims concerning discriminatory treatment and the alleged arbitrary nature of decisions - administrative and judicial - adopted against her, the Committee finds that these allegations have not been sufficiently substantiated, for purposes of admissibility, under article 2 of the Optional Protocol.

4. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be transmitted to the author and, for information, to the State party.

[Done in English, French, Spanish and Russian, English being the original version.]

ANNEX XIII

List of Committee documents issued during the reporting period

CCPR/C/51/Add.2	Second periodic report of Austria
CCPR/C/58/Add.9	Third periodic report of Ecuador
CCPR/C/64/Add.1	Third periodic report of Canada
CCPR/C/67	Provisional agenda and annotations - fortieth session
CCPR/C/SR.1009-1036/Add.1 and corrigendum	Summary records of the fortieth session
CCPR/C/28/Add.13	Second periodic report of Madagascar
CCPR/C/42/Add.11	Second periodic report of Panama
CCPR/C/45/Add.3	Initial report of Sudan
CCPR/C/52/Add.8	Third periodic report of the Byelorussian SSR
CCPR/C/58/Add.10	Third periodic report of Poland
CCPR/C/58/Add.11 and Add.12	Third periodic report of the United Kingdom of Great Britain and Northern Ireland (supplementary information)
CCPR/C/64/Add.2	Third periodic report of Mongolia
CCPR/C/68	Consideration of reports submitted by States parties under article 40 of the Covenant - initial reports of States parties due in 1991: Note by the Secretary-General
CCPR/C/69	Consideration of reports submitted by States parties under article 40 of the Covenant - second periodic reports of States parties due in 1991: Note by the Secretary-General
CCPR/C/70	Consideration of reports submitted by States parties under article 40 of the Covenant - third periodic reports of States parties due in 1991: Note by the Secretary-General

CCPR/C/71	Provisional agenda and annotations - forty-first session
CCPR/C/SR.1037-1063/Add.1	Summary records of the forty-first session
CCPR/C/45/Add.4	Initial report of Niger
CCPR/C/51/Add.3	Second periodic report of Guinea: Note by the Secretary-General
CCPR/C/57/Add.2	Second periodic report of Guinea
CCPR/C/62/Add.1	Initial report of Algeria
CCPR/C/64/Add.3	Third periodic report of Colombia
CCPR/C/64/Add.4	Third periodic report of Uruguay
CCPR/C/64/Add.5	Third periodic report of Senegal
CCPR/C/64/Add.6	Third periodic report of Iraq
CCPR/C/72	Provisional agenda and annotations - forty-second session
CCPR/C/SR.1064-1091 and corrigendum	Summary records of the forty-second session

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